

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration**

RIN 1210 AA57

Notice on Annual Reporting Enforcement Policy

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce the Department of Labor's decision not to adopt the proposed annual reporting enforcement policy described in a notice published in the **Federal Register** on March 13, 1997 (62 FR 11929). Under the proposal, the Department would not have rejected the annual report (Form 5500) of a multiemployer welfare benefit plan solely because the accountant's opinion accompanying the report was "qualified" or "adverse" due to a failure to account and report for post-retirement benefit obligations in accordance with American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) 92-6, or otherwise was affected by or reflected noncompliance with the financial statement disclosure requirements of SOP 92-6. The proposed enforcement relief also was made available on an interim basis for the 1996, 1997, and 1998 plan years to provide time for consideration of public comments on the proposal. Although the Department has decided not to adopt the proposed enforcement policy, to provide multiemployer welfare benefit plans with adequate time to comply with SOP 92-6's requirements, the Department, by this notice, is extending the interim reporting relief to cover 1999 plan year annual reports filed by multiemployer welfare benefit plans. Annual reports of multiemployer welfare benefit plans filed for plan years commencing on or after January 1, 2000, however, will be subject to rejection if there is any material qualification in the accountant's opinion accompanying the annual report due to a failure to comply with the requirement of SOP 92-6.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration (PWBA), U.S. Department of Labor, Washington, DC 20210, (202) 219-8515 (not a toll free number).

SUPPLEMENTARY INFORMATION:**A. Background**

In general, the administrator of an employee benefit plan with 100 or more

participants at the beginning of a plan year is required under Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), and the Department's regulations issued thereunder, to file an annual report and to include as part of that report the opinion of an independent qualified public accountant.¹ These annual reporting requirements are satisfied by filing the Form 5500 Annual Return/Report in accordance with its instructions and related regulations. The requirements governing the content of the opinion and report of the independent qualified public accountant are set forth in ERISA section 103(a)(3)(A) and 29 CFR 2520.103-1(b)(5). ERISA section 104(a)(4) permits the Department to reject an annual report if it determines that there is a material qualification by an accountant contained in the opinion required to be submitted pursuant to section 103(a)(3)(A). If the Department rejects a filing under section 104(a)(4), and the administrator fails to submit a satisfactory filing within 45 days, the Department may, among other things, assess a civil penalty of up to a \$1,000 a day against the administrator for failing or refusing to file an annual report.²

On March 13, 1997, the Department published a notice in the **Federal Register** (62 FR 11929) inviting public comment on a proposed annual reporting policy for multiemployer welfare benefit plans. Under this proposed policy, the Department would not reject the annual report of a multiemployer welfare benefit plan solely because the accountant's opinion accompanying the report is "qualified" or "adverse" due to a failure to account and report for post-retirement benefit obligations in accordance with the financial statement disclosure requirements of SOP 92-6. To allow sufficient time for considering public comments on the proposal, the Department announced in the **Federal Register** notice that the Department would not reject 1996 and 1997 plan year multiemployer welfare benefit plan annual reports due to such qualified or adverse accountant's opinions. In response to questions, the Department subsequently clarified the scope of the relief indicating that it would not reject

the subject annual reports because the accountant's opinion reflects or is otherwise affected by noncompliance with any aspect of SOP 92-6.³ This interim report relief was later extended to the 1998 annual reports filed by multiemployer welfare benefit plans.

B. Non-Adoption of Proposed Enforcement Policy

The Department received public comments supporting and opposing adoption of the proposed policy. After carefully evaluating all of the comments received, the Department has decided not to adopt the proposed enforcement policy.

Section 103(a)(3)(A) of ERISA provides, in relevant part, that the administrator of an employee benefit plan must engage an independent qualified public accountant to conduct an examination of any financial statements, books and records of the plan necessary to enable the accountant to form an opinion as to whether the financial statements and schedules, required to be included in the annual report, are presented fairly and in conformity with Generally Accepted Accounting Principles or "GAAP." Because the accounting profession establishes the requirements pertaining to GAAP, it has been the Department's longstanding position that it generally will not rule as to the acceptability of methods of accounting or auditing for purposes of the accountant's opinion required to be attached to the annual report. See, e.g., Advisory Opinion 84-45A (November 16, 1984).

Although the Department believes that the questions raised relating to the usefulness of the post-retirement benefit obligation disclosure required under SOP 92-6 for multiemployer and other welfare benefit plans have merit, the Department, following consideration of the comments, has concluded that the accounting profession, rather than the Department through reporting enforcement policies, should be responsible for addressing problems attendant to the application of accounting principles. For this reason, the Department has determined not to adopt the proposed enforcement policy. The Department, however, continues to encourage the AICPA, as well as the Financial Accounting Standards Board, as they review SOP 92-6 to continue to work with the multiemployer plan community and other interested parties and develop accounting methodologies for assessing post-retirement benefit obligations that will serve to produce

¹ See ERISA sections 101(b)(1) and 103, and 29 CFR 2520.103-1.

² ERISA sections 104(a)(5) and 502(c)(2), and 29 CFR 2560.502c-2. See 29 CFR 2570.502c-2 which, in accordance with the requirements of the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended, increased the civil penalty from \$1,000 a day to \$1,100 a day for violations occurring after July 29, 1997.

³ See letter to Cary Hammond from Assistant Secretary Olena Berg (July 11, 1997).

meaningful financial information that will be useful to plan fiduciaries, plan participants and beneficiaries and the Department of Labor.

C. Interim Relief and Applicability Date

This notice does not affect the Department's previous announced interim reporting relief for annual reports filed by multiemployer welfare benefit plans for 1996, 1997 and 1998 plan years. In addition, to ensure that multiemployer welfare benefit plans have an adequate opportunity to prepare their financial recordkeeping and other related systems so that financial statements can be prepared to comply

with SOP 92-6, the Department hereby announces that this same interim reporting relief will apply for the 1999 plan year annual reports filed by multiemployer welfare benefit plans. In particular, the Department understands that multiemployer welfare benefit plans may need this additional time to be able to present plan year 1999 and plan year 2000 comparative financial statements for Form 5500 filings made for the 2000 plan year. Multiemployer welfare benefit plan administrators who rely on the interim reporting relief must comply with the AICPA's pre-SOP 92-6 requirements in their financial statement treatment of the matters now

covered by SOP 92-6. Annual reports of multiemployer welfare benefit plans filed for plan years commencing on or after January 1, 2000, however, will be subject to rejection if there is any material qualification in the accountant's opinion accompanying the annual report due to a failure to comply with the requirements of SOP 92-6.

Signed at Washington DC, this 18th day of November 1998.

Meredith Miller,

*Deputy Assistant Secretary for Policy, Pension and Welfare Benefits Administration,
Department of Labor.*

[FR Doc. 98-31524 Filed 11-24-98; 8:45 am]

BILLING CODE 4510-29-M