

(d) *Commencement of proceeding* is the filing of an answer by the respondent;

(e) *Consent agreement* means a proposed written agreement and order containing a specified proposed remedy or other relief acceptable to the Secretary and consenting parties;

(f) *Final order* means a cease and desist order that is a final order of the Secretary of Labor under ERISA section 521. Such final order may result from a decision of an administrative law judge or of the Secretary on review of a decision of an administrative law judge, or from the failure of a party to invoke the procedures for a hearing under 29 CFR 2560.521-1 within the prescribed time limit. A final order shall constitute a final agency action within the meaning of 5 U.S.C. 704;

(g) *Hearing* means that part of a section 521 proceeding which involves the submission of evidence, either by oral presentation or written submission, to the administrative law judge;

(h) *Order* means the whole or any part of a final procedural or substantive disposition of a section 521 proceeding;

(i) *Party* includes a person or agency named or admitted as a party to a section 521 proceeding;

(j) *Person* includes an individual, partnership, corporation, employee welfare benefit plan, association, or other entity or organization;

(k) *Petition* means a written request, made by a person or party, for some affirmative action;

(l) *Respondent* means the party against whom the Secretary is seeking to impose a cease and desist order under ERISA section 521;

(m) *Secretary* means the Secretary of Labor or his or her delegate;

(n) *Section 521 proceeding* means an adjudicatory proceeding relating to the issuance of a temporary order under 29 CFR 2560.521-1 and section 521 of ERISA;

(o) *Solicitor* means the Solicitor of Labor or his or her delegate; and

(p) *Temporary order* means the temporary cease and desist order issued by the Secretary under 29 CFR 2560.521-1(c) and section 521 of ERISA.

### § 2571.3 Service: copies of documents and pleadings.

For section 521 proceedings, this section shall apply in lieu of § 18.3 of this title:

(a) *In general.* Copies of all documents shall be served on all parties of record. All documents should clearly designate the docket number, if any, and short title of all matters. All documents to be filed shall be delivered or mailed to the Chief Docket Clerk, Office of Administrative Law Judges, 800 K Street NW., Suite 400, Washington, DC 20001-8002, or to the OALJ Regional Office to which the section 521 proceeding may have been transferred for hearing. Each document filed shall be clear and legible.

(b) *By parties.* All motions, petitions, pleadings, briefs, or other documents shall be filed with the Office of Administrative Law Judges with a copy, including any attachments, to all other parties of record. When a party is represented by an attorney, service shall be made upon the attorney. Service of any document upon any party may be made by personal delivery or by mailing a copy to the last known address. The Secretary shall be served by delivery to the Associate Solicitor, Plan Benefits Security Division, ERISA Section 521 Proceeding, P.O. Box 1914, Washington, DC 20013 and any attorney named for service of process as set forth in the temporary order. The person serving the document shall certify to the manner of date and service.

(c) *By the Office of Administrative Law Judges.* Service of orders, decisions, and all other documents shall be made in such manner as the Office of Administrative Law Judges determines to the last known address.

(d) *Form of pleadings.*

(1) Every pleading or other paper filed in a section 521 proceeding shall designate the Employee Benefits Security Administration (EBSA) as the agency under which the proceeding is instituted, the title of the proceeding, the docket number (if any) assigned by the Office of Administrative Law Judges and a designation of the type of pleading or paper (e.g., notice, motion to dismiss, etc.). The pleading or paper shall be signed and shall contain the address and telephone number of the

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party or person representing the party. Although there are no formal specifications for documents, they should be printed when possible on standard size 8½ × 11 inch paper.

(2) Illegible documents, whether handwritten, printed, photocopies, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process provided all copies are clear and legible.

#### § 2571.4 Parties.

For section 521 proceedings, this section shall apply in lieu of § 18.10 of this title:

(a) The term “party” wherever used in these rules shall include any person that is a subject of the temporary order and is challenging the temporary order under these section 521 proceedings, and the Secretary. A party challenging a temporary order shall be designated as the “respondent.” The Secretary shall be designated as the “complainant.”

(b) Other persons shall be permitted to participate as parties only if the administrative law judge finds that the final decision could directly and adversely affect them or the class they represent, that they may contribute materially to the disposition of the section 521 proceeding and their interest is not adequately represented by the existing parties, and that in the discretion of the administrative law judge the participation of such persons would be appropriate.

(c) A person not named in a temporary order, but wishing to participate as a respondent under this section shall submit a petition to the administrative law judge within fifteen (15) days after the person has knowledge of, or should have known about, the section 521 proceeding. The petition shall be filed with the administrative law judge and served on each person who has been made a party at the time of filing. Such petition shall concisely state:

(1) Petitioner’s interest in the section 521 proceeding (including how the section 521 proceedings will directly and adversely affect them or the class they represent and why their interest is not adequately represented by the existing parties);

(2) How his or her participation as a party will contribute materially to the disposition of the section 521 proceeding;

(3) Who will appear for the petitioner;

(4) The issues on which petitioner wishes to participate; and

(5) Whether petitioner intends to present witnesses.

(d) Objections to the petition may be filed by a party within fifteen (15) days of the filing of the petition. If objections to the petition are filed, the administrative law judge shall then determine whether petitioners have the requisite interest to be a party in the section 521 proceeding, as defined in paragraph (b) of this section, and shall permit or deny participation accordingly. Where persons with common interest file petitions to participate as parties in a section 521 proceeding, the administrative law judge may request all such petitioners to designate a single representative, or the administrative law judge may designate one or more of the petitioners to represent the others. The administrative law judge shall give each such petitioner, as well as the parties, written notice of the decision on his or her petition. For each petition granted, the administrative law judge shall provide a brief statement of the basis of the decision. If the petition is denied, he or she shall briefly state the grounds for denial and may consider whether to treat the petition as a request for participation as *amicus curiae*.

#### § 2571.5 Consequences of default.

For section 521 proceedings, this section shall apply in lieu of § 18.5(b) of this title. Failure of the respondent to file an answer to the temporary order within the 30-day period provided by 29 CFR 2560.521-1(e) shall constitute a waiver of the respondent’s right to appear and contest the temporary order. Such failure shall also be deemed to be an admission of the facts as alleged in the temporary order for purposes of any proceeding involving the order issued under section 521 of ERISA. The temporary order shall then become the final order of the Secretary, within the meaning of 29 CFR 2571.2(f), 30 days from the date of the service of the temporary order.