

REORGANIZATION PLAN NO. 4 of 1978<sup>1</sup>

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, August 10, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.<sup>1</sup>

Employee Retirement Income Security Act Transfers

5 USC app; 29 USC 1001 note.

SECTION 101. *Transfer to the Secretary of the Treasury.*

Except as otherwise provided in Sections 104 and 106 of this Plan, all authority of the Secretary of Labor to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of the Treasury:

(a) regulations, rulings, opinions, variances and waivers under Parts 2 and 3 of Subtitle B of Title I and subsection 1012(c) of Title II of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1001 note) (hereinafter referred to as "ERISA"),

29 USC 1051, 1081.  
26 USC 411 note.

EXCEPT for sections and subsections 201, 203(a)(3)(B), 209, and 301(a) of ERISA;

29 USC 1051, 1053, 1059, 1081.

(b) such regulations, rulings, and opinions which are granted to the Secretary of Labor under Sections 404, 410, 411, 412, and 413 of the Internal Revenue Code of 1954, as amended, (hereinafter referred to as the "Code"),

26 USC 404, 410-413.

EXCEPT for subsection 411(a)(3)(B) of the Code and the definitions of "collectively bargained plan" and "collective bargaining agreement" contained in subsections 404 (a)(1)(B) and (a)(1)(C), 410 (b)(2)(A) and (b)(2)(B), and 413(a)(1) of the Code; and

29 USC 1102.

(c) regulations, rulings, and opinions under subsections 3(19), 3(22), 3(23), 3(24), 3(25), 3(27), 3(28), 3(29), 3(30), and 3(31) of Subtitle A of Title I of ERISA.

SECTION 102. *Transfers to the Secretary of Labor.*

Except as otherwise provided in Section 105 of this Plan, all authority of the Secretary of the Treasury to issue the following described documents pursuant to the statutes hereinafter specified is hereby transferred to the Secretary of Labor:

26 USC 4975.

(a) regulations, rulings, opinions, and exemptions under section 4975 of the Code,

EXCEPT for (i) subsections 4975 (a), (b), (c)(3), (d)(3), (e)(1), and (e)(7) of the Code; (ii) to the extent necessary for the continued enforcement of subsections 4975 (a) and (b) by the Secretary of the Treasury, subsections 4975(f)(1), (f)(2), (f)(4), (f)(5) and (f)(6) of the Code; and (iii) exemptions with respect to transactions that are exempted by subsection 404(c) of ERISA from the provisions of Part 4 of Subtitle B of Title I of ERISA; and

29 USC 1104.

(b) regulations, rulings, and opinions under subsection 2003(c) of ERISA,

26 USC 4975 note.

EXCEPT for subsection 2003(c)(1)(B).

SECTION 103. *Coordination Concerning Certain Fiduciary Actions.*

In the case of fiduciary actions which are subject to Part 4 of Subtitle B of Title I of ERISA, the Secretary of the Treasury shall notify the Secretary of Labor prior to the time of commencing any proceeding to determine whether the action violates the exclusive benefit rule of subsection 401(a) of the Code, but not later than prior to issuing a preliminary notice of intent to disqualify under that rule, and the

26 USC 401.

<sup>1</sup> As amended September 20, 1978.

Secretary of the Treasury shall not issue a determination that a plan or trust does not satisfy the requirements of subsection 401(a) by reason of the exclusive benefit rule of subsection 401(a), unless within 90 days after the date on which the Secretary of the Treasury notifies the Secretary of Labor of pending action, the Secretary of Labor certifies that he has no objection to the disqualification or the Secretary of Labor fails to respond to the Secretary of the Treasury. The requirements of this paragraph do not apply in the case of any termination or jeopardy assessment under sections 6851 or 6861 of the Code that has been approved in advance by the Commissioner of Internal Revenue, or, as delegated, the Assistant Commissioner for Employee Plans and Exempt Organizations. 26 USC 6851, 6861.

*SECTION 104. Enforcement by the Secretary of Labor.*

The transfers provided for in Section 101 of this Plan shall not affect the ability of the Secretary of Labor, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, to engage in enforcement under Section 502 of ERISA or to exercise the authority set forth under Title III of ERISA, including the ability to make interpretations necessary to engage in such enforcement or to exercise such authority. However, in bringing such actions and in exercising such authority with respect to Parts 2 and 3 of Subtitle B of Title I of ERISA and any definitions for which the authority of the Secretary of Labor is transferred to the Secretary of the Treasury as provided in Section 101 of this Plan, the Secretary of Labor shall be bound by the regulations, rulings, opinions, variances, and waivers issued by the Secretary of the Treasury. 29 USC 1201, 29 USC 1132, 29 USC 1051, 1081.

*SECTION 105. Enforcement by the Secretary of the Treasury.*

The transfers provided for in Section 102 of this Plan shall not affect the ability of the Secretary of the Treasury, subject to the provisions of Title III of ERISA relating to jurisdiction, administration, and enforcement, (a) to audit plans and employers and to enforce the excise tax provisions of subsections 4975(a) and 4975(b) of the Code, to exercise the authority set forth in subsections 502(b)(1) and 502(h) of ERISA, or to exercise the authority set forth in Title III of ERISA, including the ability to make interpretations necessary to audit, to enforce such taxes, and to exercise such authority; and (b) consistent with the coordination requirements under Section 103 of this Plan, to disqualify, under section 401 of the Code, a plan subject to Part 4 of Subtitle B of Title I of ERISA, including the ability to make the interpretations necessary to make such disqualification. However, in enforcing such excise taxes and, to the extent applicable, in disqualifying such plans the Secretary of the Treasury shall be bound by the regulations, rulings, opinions, and exemptions issued by the Secretary of Labor pursuant to the authority transferred to the Secretary of Labor as provided in Section 102 of this Plan. 26 USC 4975.

*SECTION 106. Coordination for Section 101 Transfers.*

(a) The Secretary of the Treasury shall not exercise the functions transferred pursuant to Section 101 of this Plan to issue in proposed or final form any of the documents described in subsection (b) of this Section in any case in which such documents would significantly impact on or substantially affect collectively bargained plans unless, within 100 calendar days after the Secretary of the Treasury notifies the Secretary of Labor of such proposed action, the Secretary of Labor certifies that he has no objection or he fails to respond to the Secretary of the Treasury. The fact of such a notification, except for such notification for documents described in subsection (b)(iv) of this Section, from the Secretary of the Treasury to the Secretary of Labor shall be announced by the Secretary of Labor to the public within ten days following the date of receipt of the notification by the Secretary of Labor.

(b) The documents to which this Section applies are:

(i) amendments to regulations issued pursuant to subsections 202(a)(3), 203(b)(2) and (3)(A), 204(b)(3) (A), (C), and (E), and 210(a)(2) of ERISA, and 29 USC 1053, 1054, 1060.

26 USC 410,  
411, 413, 414.  
29 USC 1054,  
1082, 1084.  
26 USC 411,  
412.

subsections 410(a)(3) and 411 (a)(5), (6)(A), and (b)(3) (A), (C), and (E), 413 (b)(4) and (c)(3) and 414(f) of the Code;

(ii) regulations issued pursuant to subsections 204(b)(3)(D), 302(c)(8), and 304 (a) and (b)(2)(A) of ERISA, and subsections 411(b)(3)(D), 412 (c)(8), (e), and (f)(2)(A) of the Code; and

(iii) revenue rulings (within the meaning of 26 CFR Section 601.201(a)(6)), revenue procedures, and similar publications, if the rulings, procedures and publications are issued under one of the statutory provisions listed in (i) and (ii) of this subsection; and

(iv) rulings (within the meaning of 26 CFR Section 601.201(a)(2)) issued prior to the issuance of a published regulation under one of the statutory provisions listed in (i) and (ii) of this subsection and not issued under a published Revenue Ruling.

(c) For those documents described in subsections (b)(i), (b)(ii), and (b)(iii) of this Section, the Secretary of Labor may request the Secretary of the Treasury to initiate the actions described in this Section 106 of this Plan.

#### SECTION 107. *Evaluation.*

On or before January 31, 1980, the President will submit to both Houses of the Congress an evaluation of the extent to which this Reorganization Plan has alleviated the problems associated with the present administrative structure under ERISA, accompanied by specific legislative recommendations for a long-term administrative structure under ERISA.

#### SECTION 108. *Incidental Transfers.*

So much of the personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of any agencies abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

#### SECTION 109. *Effective Date.*

The provisions of this Reorganization Plan shall become effective at such time or times, on or before April 30, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5, United States Code.

The plan became effective Dec. 31, 1978.\*

#### LEGISLATIVE HISTORY:

##### WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS (1978):

Vol. 14, No. 32: Aug. 10, Presidential message transmitting Reorganization Plan No. 4 of 1978 to Congress. (Also printed as House Document No. 95-375.)

Vol. 14, No. 38: Sept. 20, Presidential message transmitting an amendment to Reorganization Plan No. 4 of 1978. (Also printed as House Document No. 95-384.)

HOUSE REPORT No. 95-1658 accompanying H. Res. 1308 (Comm. on Government Operations).

SENATE REPORT No. 95-1281 accompanying S. Res. 537 (Comm. on Governmental Affairs).

##### CONGRESSIONAL RECORD, Vol. 124 (1978):

Aug. 10, H. Res. 1308, resolution of disapproval, introduced in House and referred to Committee on Government Operations.

Aug. 11, S. Res. 537, resolution of disapproval, introduced in Senate and referred to Committee on Governmental Affairs.

Oct. 13, H. Res. 1308

Oct. 13, S. Res. 537

rejected by House.  
rejected by Senate.

\*As provided for by Executive Order 12108 (Vol. 14, Weekly Compilation of Presidential Documents, p. 2300; 3 CFR 1978 Comp., p. 275; 29 USC 1001 note).

EDITORIAL NOTE: The President's statement of Oct. 14, 1978, on congressional action on Reorganization Plan No. 4 of 1978, is printed in the Weekly Compilation of Presidential Documents (vol. 14, p. 1782).