

ERISA Section B

TITLE I. PROTECTION OF EMPLOYEE BENEFIT RIGHTS  
Subtitle B - Regulatory Provisions  
Part 1 Reporting and Disclosure

DUTY OF DISCLOSURE AND REPORTING  
Act Section 101.

(a) The administrator of each employee benefit plan shall cause to be furnished in accordance with Section 104(b) to each participant covered under the plan and to each beneficiary who is receiving benefits under the plan

- (1) a summary plan description described in Section 102(a)(1); and
  - (2) the information described in sections 104(b)(3) and 105(a) and (c).
- (b) The administrator shall, in accordance with section 104(a) file with:
- (1) the summary plan description described in section 102(a)(1);
  - (2) a plan description containing the matter required in section 102(b);
  - (3) modifications and changes referred to in section 102(a)(2);
  - (4) the annual report containing the information required by section 103; and
  - (5) terminal and supplementary reports as required by subsection (c) of this section.

(c ) (1) Each administrator of an employee pension benefit plan which is winding up its affairs (without regard to the number of participants remaining in the plan) shall, in accordance with regulations prescribed by the Secretary, file such terminal reports as the Secretary may consider necessary. A copy of such report shall also be filed with the Pension Benefit Guaranty Corporation.

(2) The Secretary may require terminal reports to be filed with regard to any employee welfare benefit plan which is winding up its affairs in accordance with regulations promulgated by the Secretary.

(3) The Secretary may require that a plan described in paragraph (1) or (2) file a supplementary or terminal report with the annual report in the year such plan is terminated and that a copy of such supplementary or terminal report in the case of a plan described in paragraph (1) be also filed with the Pension Benefit Guaranty Corporation.

(d) NOTICE OF FAILURE TO MEET MINIMUM FUNDING STANDARDS.

(1) IN GENERAL. If an employer maintaining a plan other than a multi-employer plan fails to make a required installment or other payment required to meet the

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minimum funding standard under Section 302 to a plan before the 60th day following the due date for such installment or other payment, the employer shall notify each participant and beneficiary (including an alternate payee as defined in Section 206(d)(3)(K)) of such plan of such failure. Such notice shall be made at such time and in such manner as the Secretary may prescribe.

(2) SUBSECTION NOT TO APPLY IF WAIVER PENDING. This subsection shall not apply to any failure if the employer has filed a waiver request under Section 303 with respect to the plan year to which the required installment relates, except that if the waiver request is denied, notice under paragraph (1) shall be provided within 60 days after the date of such denial.

(3) DEFINITIONS. For purposes of this subsection, the terms "required installment" and "due date" have the same meanings given such terms by Section 302(e).

(e) NOTICE OF TRANSFER OF EXCESS PENSION ASSETS TO HEALTH BENEFITS ACCOUNTS.

(1) NOTICE TO PARTICIPANTS. Not later than 60 days before the date of a qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the administrator of the plan shall notify (in such manner as the Secretary may prescribe) each participant and beneficiary under the plan of such transfer. Such notice shall include information with respect to the amount of excess pension assets, the portion to be transferred, the amount of health benefits liabilities expected to be provided with the assets transferred, and the amount of pension benefits of the participant which will be non-forfeitable immediately after the transfer.

(2) NOTICE TO SECRETARIES, ADMINISTRATOR, AND EMPLOYEE ORGANIZATIONS.

(A) IN GENERAL. Not later than 60 days before the date of any qualified transfer by an employee pension benefit plan of excess pension assets to a health benefits account, the employer maintaining the plan from which the transfer is made shall provide the Secretary, the Secretary of the Treasury, the administrator, and each employee organization representing participants in the plan a written notice of such transfer. A copy of any such notice shall be available for inspection in the principal office of the administrator.

(B) INFORMATION RELATING TO TRANSFER. Such notice shall identify the plan from which the transfer is made, the amount of the transfer, a detailed accounting of assets projected to be held by the plan immediately before and immediately after the transfer, and the current liabilities under the plan at the time of the transfer.

(C) AUTHORITY FOR ADDITIONAL REPORTING REQUIREMENTS. The Secretary may prescribe such additional reporting requirements as may be necessary to carry out the purposes of this Section.

(3) DEFINITIONS. For purposes of paragraph (1), any term used in such

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paragraph which is also used in Section 420 of the Internal Revenue Code of 1986 (as in effect on January 1, 1991) shall have the same meaning as when used in such Section.

(f) INFORMATION NECESSARY TO COMPLY WITH MEDICARE AND MEDICAID COVERAGE DATA BANK REQUIREMENTS.

(1) PROVISION OF INFORMATION BY GROUP HEALTH PLAN UPON REQUEST OF EMPLOYER.

(A) IN GENERAL. An employer shall comply with the applicable requirements of Section 1144 of the Social Security Act (as added by Section 13581 of the Omnibus Budget Reconciliation Act of 1993). Upon the request of an employer maintaining a group health plan, any plan sponsor, plan administrator, insurer, third-party administrator, or other person who maintains under the plan the information necessary to enable the employer to comply with the applicable requirements of Section 1144 of the Social Security Act shall, in such form and manner as may be prescribed in regulations of the Secretary (in consultation with the Secretary of Health and Human Services), provide such information (not inconsistent with paragraph (2))

(i) in the case of a request by an employer described in subparagraph (B) and a plan that is not a multi-employer plan or a component of an arrangement described in subparagraph (C), to the Medicare and Medicaid Coverage Data Bank;

(ii) in the case of a plan that is a multi-employer plan or is a component of an arrangement described in subparagraph (C), to the employer or to such Data Bank, at the option of the plan; and

(iii) in any other case, to the employer or to such Data Bank, at the option of the employer.

(B) EMPLOYER DESCRIBED. An employer is described in this subparagraph for any calendar year if such employer normally employed fewer than 50 employees on a typical business day during such calendar year.

(C) ARRANGEMENT DESCRIBED. An arrangement described in this subparagraph is any arrangement in which two or more employers contribute for the purpose of providing group health plan coverage for employees.

(2) INFORMATION NOT REQUIRED TO BE PROVIDED. Any plan sponsor, plan administrator, insurer, third-party administrator, or other person described in paragraph (1)(A) (other than the employer) that maintains the information under the plan shall not provide to an employer in order to satisfy the requirements of Section 1144 of the Social Security Act, and shall not provide to the Data Bank under such Section, information that pertains in any way to

(A) the health status of a participant, or of the participant's spouse, dependent child, or other beneficiary,

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(B) the cost of coverage provided to any participant or beneficiary, or

(C) any limitations on such coverage specific to any participant or beneficiary.

(3) REGULATIONS. The Secretary may, in consultation with the Secretary of Health and Human Service, prescribe such regulations as are necessary to carry out this subsection.

Amendments

P.L. 103-66, Section 4301(b)(1):

Amended ERISA Section 101 by redesignating subsection (f) as subsection (g) and by inserting after subsection (e) the new subsection (f) to read as above.

The above amendments are effective on August 10, 1993. Any plan amendment required to be made by Act. Section 4301 need not be made before the first plan year beginning on or after January 1, 1994 if: (1) the plan is operated in accordance with Act Section 4301 during the period after August 9, 1993 and before such first plan year, and (2) the amendment applies retroactively to this period. A plan will not be treated as failing to be operated in accordance with plan provisions merely because it operates in accordance with the effective date requirements.

P.L. 101-508, 8ec. 12012(d)(I):

Amended ERISA Section 101 by redesignating subsection (e) as subsection (f) and adding new Subsection (e) to read as above effective for qualified transfers under Code Section 420 made after November 5, 1990.

P.L. 101-239, Section 7881(b)(5)(A):

Amended ERISA Section 101(d)(1) by striking "an employer of a plan" and inserting "an employer maintaining a plan" effective for plan years beginning after December 31, 1987.

P.L. 101-239, Section 7881(b)(5)(C):

Amended P.L. 100203, Section 9304(d) by striking "Section" and inserting "Effective with respect to plan years beginning after December 31, 1987, Section" effective for plan years beginning after December 31, 1987.

P.L. 101-7.39, -7894(b)(1):

Amended the heading for part I of subtitle B of Title I of ERISA by striking "Part I" and inserting "Part 1" effective September 2, 1974.

P.L. 101-239, Section 7894(b)(2):

Amended ERISA Section 101(a)(2) by striking "Section" and inserting "sections" effective September 2, 1974.

P.L. 100-203, Section 9304(d):

Amended ERISA Section 101 by redesignating subsection (d) as (e) and adding new Subsection (d) to read as above, effective for plan years beginning after December 31, 1987.

.095 Committee Report on P.L. 100-203 Conference Committee Report. Under the (House) bill, three installments of estimated contributions are required during the plan year, with the total contribution due within 21/2 months after the end of the plan

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year. The amount of each installment is 1/4 of the lesser of (1) 80 percent of the amount required to be contributed for the current plan year or (2) 90 percent of the amount required to be contributed for the preceding plan year.

An excise tax is imposed if the full amount of any required installment is not paid. The excise tax is determined by applying the interest rate for underpayment of income taxes to the amount of the underpayment for the period of the underpayment. The period of the underpayment begins on the due date of the installment and ends on the earlier of the date on which the underpayment is contributed to the plan or the date the total contribution is due. Each member of the employer's controlled group is jointly and severally liable for the tax.

The acceleration of the due date for required plan contributions generally is effective for plan years beginning after December 31, 1988, with a phase-in rule applying for plan years beginning in 1988. The provision requiring plan contributions to be made in installments is effective for plan years beginning after December 31, 1987, with a transition rule applicable for 1988 plan years.

(The Finance Committee amendment provides:) Similar to the ways and Means Committee bill, except that four installments are required during the plan year, with the total contribution due within 8 1/2 months after the end of the plan year. The amount of each required installment is 1/4 of the lesser of (1) 90 percent of the amount required to be contributed for the current plan year or (2) 100 percent of the amount required to be contributed for the preceding plan year.

Failure to make installments. Same as the ways and Means Committee bill, except that interest is paid to the plan rather than as an excise tax, and the interest rate on missed contributions is the greater of (1) 175 percent of the mid-term applicable Federal interest rate (AFR) or (2) the rate of interest taken into account in determining costs under the plan. In addition, a lien arises if a required installment is not paid in full. The employer is required to notify employees of the failure to make required installments.

Failure to make total contribution for plan year. Same as the ways and Means Committee bill. In addition, the 5-percent excise tax is increased to 10 percent, and a lien arises in favor of the plan if the required contribution is not paid in full. The employer is required to notify employees of the failure to make contributions.

The provisions apply for plan years beginning after December 31, 1987.

The conference agreement generally follows the Finance Committee amendment, with modifications.

With respect to the interest rate applicable to a failure to make contributions when due, the conference agreement clarifies that the interest rate continues at the specified rate until the missed contributions are actually paid to the plan.

In the case of a plan with a funded ratio of less than 100 percent, a statutory tax lien arises on all controlled group property in favor of the plan 60 days after the due date of an unpaid contribution (whether or not a waiver application is pending). The amount of the lien is the cumulative missed contributions in excess of \$1 million. Missed contributions originally due before the effective date are not subject to this lien provision (but they are taken into account in applying the \$1 million rule).

Under the conference agreement, the employer and each member of the controlled group that includes the employer are liable for contributions required under the minimum funding rules. However, this controlled group liability does not alter the rules for determining the extent to which an employer's contributions to a plan are deductible. Thus, in general, a deduction for a contribution is available under Section 404 only for the employer who directly employs the participants.

.10 Conference Committee Explanation (P.L. 93-06). Plans subject to the provisions and exemptions. Under the conference substitute, the new reporting and disclosure

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requirements are to be administered by the Secretary of Labor and are to be applied to all pension and welfare plans established or maintained by an employer or employee organization engaged in, or affecting, interstate commerce. Governmental plans, certain church plans, workmen's compensation and unemployment compensation plans, plans maintained outside the United States for the benefit of persons substantially all of whom are nonresident aliens, and so-called excess benefit plans, which provide benefits in addition to those for which deductions may be taken under the tax laws, are exempted from the requirements. The Secretary of Labor also is authorized to waive and modify certain of these requirements for employee benefit plans.

All plans of the types subject to the reporting and disclosure provisions are to be required to file an annual report with the Secretary of Labor regardless of the number of participants involved. However, simplified reports may be authorized for plans with fewer than 100 participants.

Reports on termination. In addition to the annual reports which must be filed with the Secretary of Labor, special terminal reports are required to be filed for pension plans that are winding up their affairs. These terminal reports may also be required by the Secretary of Labor for welfare plans. Also in the year a plan is terminated the Secretary may require the supplementary information to be filed with the annual report.

#### Regulations

Reg. Section 2520.101-1 was adopted by FR Doc. 76-11859 (41 FR 16957) under "Title 29-Labor; Chapter XXV Office of Employee Benefits Security, Subchapter C Reporting and Disclosure Under the Employee Retirement Income Security Act of 1974; Part 252-Rules and Regulations for Reporting and Disclosure." The regulation was filed with the Federal Register on April 22, 1976, and published in the Federal Register on April 23, 1976.

#### Subpart A General Reporting and Disclosure Requirements

Section 2520.101-1 Duty of reporting and disclosure. The procedures for implementing the plan administrator's duty of reporting to the Secretary of Labor and disclosing information to participants and beneficiaries are located in Subparts D, E and F of this part.

#### PLAN DESCRIPTION AND SUMMARY PLAN DESCRIPTION

Act Section 102.

(a) (1) A summary plan description of any employee benefit plan shall be furnished to participants and beneficiaries as provided in Section 104(b). The summary plan description shall include the information described in subsection (b), shall be written in a manner calculated to be understood by the average plan participant, and shall be sufficiently accurate and comprehensive to reasonably apprise such participants and beneficiaries of their rights and obligations under the plan. A summary of any material modification in the terms of the plan and any change in the information required under subsection (b) shall be written in a manner calculated to be understood by the average plan participant and shall be furnished in accordance with Section 104(b)(1).

(2) A plan description (containing the information required by subsection (b)) of any employee benefit plan shall be prepared on forms prescribed by the Secretary, and shall be filed with the Secretary as required by Section 104(a)(1). Any material modification in the terms of the plan and any change in the information described in subsection (b) shall be filed in accordance with Section 104(a)(1)(D).

(b) The plan description and summary plan description shall contain the following information: The name and type of administration of the plan; the name and address of the person designated as agent for the service of legal process, if such person is not the administrator, the name and address of the administrator, names, titles, and addresses of any trustee or trustees (if they are persons different from

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the administrator); a description of the relevant provisions of any applicable collective bargaining agreement; the plan's requirements respecting eligibility for participation and benefits; a description of the provisions providing for non-forfeitable pension benefits; circumstances which may result in disqualification, ineligibility, or denial or loss of benefits; the source of financing of the plan and the identity of any organization through which benefits are provided; the date of the end of the plan year and whether the records of the plan are kept on a calendar, policy, or fiscal year basis; the procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under Section 503 of this Act).

#### Regulations

Reg. Section 2520.102-1 was adopted by FR Doc. 7-11859 (41 FR 16957) under "Title 29-Labor; Chapter XXV- Office of Employee Benefits Security, Subchapter C Reporting and Disclosure Under the Employee Retirement Income Security Act of 1974; Part 252-Rules and Regulations for Reporting and Disclosure." The regulation was filed with the Federal Register on April 22, 1976, and published in the Federal Register on April 23, 1976. Reg. Sections 2520.102-2 through 2520.102-4 were adopted by FR Doc. 77-7637, filed with the Federal Register on March 11, 1977, and published in the Federal Register on March 15, 1977 (42 FR 14266). Reg. Section 2520.102-3(m) and 2520.102-3(t) are interim as well as proposed regulations. The regulations are effective March 15, 1977. Reg. Section 2520.102-3 was amended by FR Doc. 20810, filed with the Federal Register on July 18, 1977, published in the Federal Register on July 19, 1977 effective July 19, 1977 (42 FR 37178). Reg. Section 2520.102-5 was added by FR Doc. 81-2105, filed with the Federal Register on January 19, 1981, published in the Federal Register on January 21, 1981, effective February 20, 1981 (46 FR 5cs82).

#### Section 2520.102-1 Plan description.

(a) The plan description required by Section 102 of the Act shall consist of a summary plan description as described in Section 102(b) of the Act and Sections 2520.102-2 and 2520.102-3 thereunder, except as provided in paragraph (b) of this Section.

(b) For purposes of Section 2520.104-22, the limited exemption for apprenticeship plans, the plan description shall consist of a Department of Labor Form EBS-1 "Plan Description" completed in accordance with Section 2520.104a-1(a) and the instructions to the Form. (Amended by 44 FR 31640, effective June 1, 1979.)

Section 2520.102-1 Plan description. The plan description required by Section 102 of the Act shall consist of a summary plan description as described in Section 102(b) of the Act and sections Sections 2520.102-2 and 2520.102-3 thereunder.

#### Section 2520.102-2 Style and format of summary plan description. -

(a) Method of presentation. The summary plan description shall be written in a manner calculated to be understood by the average plan participant and shall be sufficiently comprehensive to apprise the plan's participants and beneficiaries of their rights and obligations under the plan. In fulfilling these requirements, the plan administrator shall exercise considered judgment and discretion by taking into account such factors as the level of comprehension and education of typical participants in the plan and the complexity of the terms of the plan. Consideration of these factors will usually require the limitation or elimination of technical jargon and of long, complex sentences, the use of clarifying examples and illustrations, the use of clear cross-references and a table of contents.

(b) General format. The format of the summary plan description must not have the effect of misleading, misinforming or failing to inform participants and beneficiaries. Any description of exceptions, limitations, reductions, and other restrictions of plan benefits shall not be minimized, rendered obscure, or otherwise made to appear unimportant. Such exceptions, limitations, reductions, or restrictions of plan benefits shall be described or summarized in a manner not less prominent than the style, captions, printing type, and prominence used to describe

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or summarize plan benefits. The advantages and disadvantages of the plan shall be presented without either exaggerating the benefits or minimizing the limitations. The description or summary of restrictive plan provisions need not be disclosed in the summary plan description in close conjunction with the description or summary of benefits, provided that adjacent to the benefit description the page on which the restrictions are described is noted.

(c) Foreign languages. In the case of either

(1) A plan that covers fewer than 100 participants at the beginning of a plan year, and in which 25 percent or more of all plan participants are literate only in the same non-English language, or

(2) A plan which covers 100 or more participants at the beginning of the plan year, and in which the lesser of:

(i) 500 or more participants, or

(ii) 100 or more of all plan participants are literate only in the same non-English language, so that a summary plan description in English would fail to inform these participants adequately of their rights and obligations under the plan, the plan administrator for such plan shall provide these participants with an English-language summary plan description which prominently displays a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants and shall be calculated to provide them with a reasonable opportunity to become informed as to their rights and obligations under the plan. The notice offering assistance contained in the summary plan description shall clearly set forth in the non-English language common to such participants the procedures they must follow in order to obtain such assistance.

Example. Employer A maintains a pension plan which covers 1000 participants. At the beginning of a plan year five hundred of Employer A's covered employees are literate only in Spanish, 101 are literate only in Vietnamese, and the remaining 399 are literate in English. Each of the 1000 employees receives a summary plan description in English, containing an assistance notice in both Spanish and Vietnamese stating the following:

This booklet contains a summary in English of your plan rights and benefits under Employer A Pension Plan. If you have difficulty understanding any part of this booklet, contact Mr. John Doe, the plan administrator, at his office in Room 123, 456 Main St., Anywhere City, State 20001. Office hours are from 8:30 A.M. to 5:00 P.M. Monday through Friday. You may also call the plan administrator's office at (202) 555-2345 for assistance. (Added by 42 FR 14266, effective March 15, 1977.)

Section 2520.102-3 Contents of summary plan description. Section 102 of the Act specifies information that must be included in the summary plan description. The summary plan description must accurately reflect the contents of the plans as of a date not earlier than 120 days prior to the date such summary plan description is disclosed. The following information shall be included in the summary plan description of both employee welfare benefit plans and employee pension benefit plans, except as stated otherwise in subsection (j) through (n):

(a) The name of the plan, and, if different, the name by which the plan is commonly known by its participants and beneficiaries;

(b) The name and address of

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(1) In the case of a single employer plan, the employer whose employees are covered by the plan,

(2) In the case of a plan maintained by an employee organization for its members, the employee organization that maintains the plan,

(3) In the case of a collectively-bargained plan established or maintained by one or more employers and one or more employee organizations, the association, committee, joint board of trustees, parent, or most significant employer of a group of employers all of which contribute to the same plan, or other similar representative of the parties who established or maintain the plan, as well as:

(i) A statement that a complete list of the employers and employee organizations sponsoring the plan may be obtained by participants and beneficiaries upon written request to the plan administrator, and is available for examination by participants and beneficiaries, as required by Section Section 2520.104b-1 and 2520.104b-30, or,

(ii) A statement that participants and beneficiaries may receive from the plan administrator, upon written request, information as to whether a particular employer or employee organization is a sponsor of the plan and, if the employer or employee organization is a plan sponsor, the sponsor's address.

(4) In the case of a plan established or maintained by two or more employers, the association, committee, joint board of trustees, parent, or most significant employer of a group of employers all of which contribute to the same plan, or other similar representative of the parties who established or maintain the plan, as well as:

(i) A statement that a complete list of the employers sponsoring the plan may be obtained by participants and beneficiaries upon written request to the plan administrator, and is available for examination by participants and beneficiaries, as required by Section Section 2520.104b-1 and 2520.104b-30, or,

(ii) A statement that participants and beneficiaries may receive from the plan administrator, upon written request, information as to whether a particular employer is a sponsor of the plan and, if the employer is a plan sponsor, the sponsor's address. (Amended by 42 FR 37178, effective July 19, 1977.)

(c) The employer identification number (EIN) assigned by the Internal Revenue Service to the plan sponsor and the plan number assigned by the plan sponsor. (For further detailed explanation, see the instructions to the plan description Form EBS-I and "Identification Numbers Under ERISA" (Publ. 1004), published jointly by DOL, IRS, and PBGC);

(d) The type of pension or welfare plan, e.g., for pension plans - defined benefit, money purchase, profit sharing, etc., and for welfare plans - hospitalization, disability, pre-paid legal service, etc.;

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(e) The type of administration of the plan, e.g., contract administration, insurer administration, etc.;

(f) The name, business address, and business telephone number of the plan administrator as that term is defined by Section 3(16) of the Act;

(g) The name of the person designated as agent for service of legal process, and the address at which process may be served on such person, and in addition, a statement that service of legal process may be made upon a plan trustee or the plan administrator;

(h) The name, Title, and address of the principal place of business of each trustee of the plan;

(i) If a plan is maintained pursuant to one or more collective bargaining agreements, a statement that the plan is so maintained, and that a copy of any such agreement may be obtained by participants and beneficiaries upon written request to the plan administrator, and is available for examination by participants and beneficiaries, as required by Sections 2520.104b-1 and 2520.104b-30. For the purpose of this paragraph, a plan is maintained pursuant to a collective bargaining agreement if such agreement controls any duties, rights or benefits under the plan, even though such agreement has been superseded in part for other purposes;

(j) The plan's requirements respecting eligibility for participation and for benefits. The summary plan description shall describe the plan's provisions relating to eligibility to participate in the plan, such as age or years of service requirements, and the items listed in subparagraphs (1) or (2) as appropriate:

(1) For employee pension benefit plans, it shall also include a statement describing the plan's normal retirement age, as that term is defined in Section 3(24) of the Act, and a statement describing any other conditions which must be met before a participant will be eligible to receive benefits. Such plan benefits shall be described or summarized.

(2) For employee welfare benefit plans, it shall also include a statement of the conditions pertaining to eligibility to receive benefits, and a description or summary of the benefits. In the case of a welfare plan providing extensive schedules of benefits (a medical care plan, for example), only a general description is required if reference is made to detailed schedules of benefits which are available without cost to any participant or beneficiary who so requests;

(k) In the case of an employee pension benefit plan, a statement describing any joint and survivor benefits provided under the plan, including any requirement that an election be made as a condition to select or reject the joint and survivor annuity;

(1) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture or suspension of any benefits that a participant or beneficiary might otherwise reasonably expect the plan to provide on the basis of the description of benefits required by (j) and (k) above.

(m) For an employee pension benefit plan the following information:

(1) if the benefits of the plan are not insured under Title IV of the Act, a statement of this fact, and the reason for the lack of insurance; and

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(2) if the benefits of the plan are insured under Title IV of the Act, a statement of this fact, a summary of the pension benefit guaranty provisions of Title IV, and a statement indicating that further information on the provisions of Title IV can be obtained from the plan administrator or the Pension Benefit Guaranty Corporation. The address of the PBGC shall be provided.

(3) a summary plan description will be deemed to have complied with subparagraph (2) if it includes the following statement in the summary plan description:

Benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC) if the plan terminates. Generally, the PBGC guarantees most vested normal age retirement benefits, early retirement benefits, and certain disability and survivor's pensions. However, PBGC does not guarantee all types of benefits under covered plans, and the amount of benefit protection is subject to certain limitations.

The PBGC guarantees vested benefits at the level in effect on the date of plan termination. However, if a plan has been in effect less than five years before it terminates, or if benefits have been increased within the five years before plan termination, the whole amount of the plan's vested benefits or the benefit increase may not be guaranteed. In addition, there is a ceiling on the amount of monthly benefit that PBGC guarantees, which is adjusted periodically.

For more information on the PBGC insurance protection and its limitations, ask your Plan Administrator or the PBGC. Inquiries to the PBGC should be addressed to the Office of Communications, PBGC, 2020 K Street NW., Washington, D.C. 20006. The PBGC Office of Communications may also be reached by calling 202-254-4817. (Added by 42 FR 37178, effective July 19, 1977.)

(n) In the case of an employee pension benefit plan, a description and explanation of the plan provisions for determining years of service for eligibility to participate, vesting, and breaks in service, and years of participation for benefit accrual. The description shall state the service required to accrue full benefits and the manner in which accrual of benefits is prorated for employees failing to complete full service for a year.

(o) In the case of an employee pension benefit plan that will use the "cutback" rule of Internal Revenue Service Revenue Ruling 76-378, IRB 1976-40, October 4, 1976, to make retroactive changes in the vesting or accrual provisions described in the summary plan description, a statement that certain provisions of the plan are subject to amendment which directly or indirectly modifies certain plan rights and benefits, the nature of such modifications, the identification by reference of such plan provisions, and the identification by reference of the portions of the summary plan description where such provisions are described. Such statement may be either printed within the text of the summary plan description or it may be printed in a separate sheet and disclosed together with the summary plan description.

(p) The sources of contributions to the plan for example, employer, employee organization, employees and the method by which the amount of contribution is calculated. Defined benefit pension plans may state without further explanation that the contribution is actuarially determined.

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(q) The identity of any funding medium used for the accumulation of assets through which benefits are provided. The summary plan description shall identify any insurance company, trust fund, or any other institution, organization, or entity which maintains a fund on behalf of the plan or through which the plan is funded or benefits are provided.

(r) The date of the end of the year for purposes of maintaining the plan's fiscal records;

(s) The procedures to be followed in presenting claims for benefits under the plan and the remedies available under the plan for the redress of claims which are denied in whole or in part (including procedures required under Section 503 of Title I of the Act); and

(t) (1) The statement of ERISA rights authorized by Section 104(c) of the Act, containing the items of information applicable to the plan included in the model statement of subparagraph (2) of this paragraph. Items which are not applicable to the plan are not required to be included. The statement may contain explanatory and descriptive provisions in addition to those prescribed in paragraph (t)(2) of this Section. However, the style and format of the statement must not have the effect of misleading, misinforming or failing to inform participants and beneficiaries of a plan. All such information shall be written in a manner calculated to be understood by the average plan participant, taking into account factors such as the level of comprehension and education of typical participants in the plan and the complexity of the items required under this subparagraph to be included in the statement. Inaccurate, incomprehensible or misleading explanatory material will fail to meet the requirements of this Section. The statement of ERISA rights (the model statement or a statement prepared by the plan), must appear as one consolidated statement. If a plan finds it desirable to make additional mention of certain rights elsewhere in the summary plan description, it may do so. The summary plan description may state that the statement of ERISA rights is required by federal law and regulation.

(2) A summary plan description will be deemed to comply with the requirements of paragraph (e)(1) of this Section if it includes the following statement; items of information which are not applicable to a particular plan may be deleted: As a participant in (name of plan) you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974 (ERISA). ERISA provides that all plan participants shall be entitled to:

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all plan documents, including insurance contracts, collective bargaining agreements and copies of all documents filed by the plan with the U.S. Department of Labor, such as detailed annual reports and plan descriptions.

Obtain copies of all plan documents and other plan information upon written request to the plan administrator. The administrator may make a reasonable charge for the copies.

Receive a summary of the plan's annual financial report. The plan administrator is required by law to furnish each participant with a copy of this summary annual report.

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Obtain a statement telling you whether you have a right to receive a pension at normal retirement age and if so, what your benefits would be at normal retirement age if you stop working under the plan now. If you do not have a right to a pension, the statement will tell you how many more years you have to work to get a right to a pension. This statement must be requested in writing and is not required to be given more than once a year. The plan must provide the statement free of charge.

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your plan, called "fiduciaries" of the plan, have a duty to do so prudently and in the interest of you and other plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a (pension, welfare) benefit or exercising your rights under ERISA. If your claim for a (pension, welfare) benefit is denied in whole or in part you must receive a written explanation of the reason for the denial. You have the right to have the plan review and reconsider your claim. Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request materials from the plan and do not receive them within 30 days, you may file suit in a federal court. In such a case, the court may require the plan administrator to provide the materials and pay you up to \$100 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the administrator. If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court. If it should happen that plan fiduciaries misuse the plan's money, or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor, or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous. If you have any questions about your plan, you should contact the plan administrator. If you have any questions about this statement or about your rights under ERISA, you should contact the nearest Area Office of the U.S. Labor-Management Services Administration, Department of Labor. (Added by 42 FR 37178, effective July 19, 1977.)

Section 2520.1024 Option for different summary plan descriptions. In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the amendment is adopted and to employees who later become participants, but not to participants who no longer are employees when the amendment is adopted. (See Section 2520.104b-4.) Similarly, a plan may provide for different benefits for participants employed at different plants of the employer, or for different classes of participants in the same plant. In such cases the plan administrator may fulfill the requirement to furnish a summary plan description to participants covered under the plan and beneficiaries receiving benefits under the plan by furnishing to each member of each class of participants and beneficiaries a copy of a summary plan description appropriate to that class. Each summary plan description so prepared shall follow the style and format prescribed in Section 2520.102-2, and shall contain all information which is required to be contained in the summary plan description under Section 2520.102-3. It may omit information which is not applicable to the class of participants or beneficiaries to which it is furnished. It should also clearly identify on the first page of the text the class of participants and beneficiaries for which it has been prepared and the plan's coverage of other classes. If the classes which the employee benefit plan covers are too numerous to be listed adequately on the first page of the text of the summary plan description, they may be listed elsewhere in the text so long as the first page

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of the text contains a reference to the page or pages in the text which contain this information. If the plan administrator elects to prepare more than one summary plan description, each such summary plan description shall be filed with the Secretary in the manner provided in Section 2520.104a-3(b). (Added by 42 FR 14266, effective March 15,1977.)

Section 2520.102-5 Limited exemption with respect to summary plan descriptions of welfare plans providing benefits through a qualified health maintenance organization.

(a) The summary plan description of an employee welfare benefit plan under which some or all benefits are provided through membership in one or more qualified health maintenance organizations, as defined in Section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. Section 300e-9(d), shall not be required to include, with respect to any such qualified health maintenance organization, the information described in sections 102-3(j)(2), 102-3(1), 102-3(q) and 102-3(s) of this Part 2520, provided that:

(1) Such summary plan description contains a notice of the type described in paragraph (b) of this Section;

(2) Any request made in the manner described in paragraph (b)(4) of this Section is transmitted promptly by the plan administrator to any such organization in which the person making the request is eligible for membership as a benefit under the plan; and

(3) The plan administrator furnishes, in the manner described in Section 104b-1 of this Part 2520, to each person to whom such summary plan description is furnished, the identity of all such qualified health maintenance organizations in which such person is eligible for membership as a benefit under the plan at a date no later than the date when the option of membership in the qualified health maintenance organization is offered to such person.

(b) The notice referred to in paragraph (a) of this section shall indicate:

(1) The availability of membership in one or more qualified health maintenance organizations as defined in Section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. Section 300e-9(d), as an option under the plan;

(2) whether such membership is made available as the sole benefit under the plan, in addition to one or more other benefits, or as an alternative to one or more other benefits;

(3) That each such organization in which membership is available to the participant or beneficiary will supply him or her upon request, written materials concerning (i) the nature of services provided to members; (ii) conditions pertaining to eligibility to receive such services (other than general conditions pertaining to eligibility for participation in the plan) and circumstances under which services may be denied; and (iii) the procedures to be followed in obtaining such services, and the procedures available for the review of claims for services which are denied in whole or in part; and

(4) That requests for the materials described in paragraph (b)(3) of this

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Section may be addressed to the plan administrator. (Added by 46 FR 5882, originally scheduled to be effective February 20, 1981. However, the effective date was delayed under the President's regulation freeze until March 30, 1981 (46 FR 11253).)

ANNUAL REPORTS

Act Section 103.

(a) (1) (A) An annual report shall be published with respect to every employee benefit plan to which this part applies. Such report shall be filed with the Secretary in accordance with Section 104(a), and shall be made available and furnished to participants in accordance with Section 104(b).

(B) The annual report shall include the information described in subsections (b) and (c) and where applicable subsections (d) and (e) and shall also include

(i) a financial statement and opinion, as required by paragraph (3) of this subsection, and

(ii) an actuarial statement and opinion, as required by paragraph (4) of this subsection.

(2) If some or all of the information necessary to enable the administrator to comply with the requirements of this Title is maintained by

(A) an insurance carrier or other organization which provides some or all of the benefits under the plan, or holds assets of the plan in a separate account,

(B) a bank or similar institution which holds some or all of the assets of the plan in a common or collective trust or a separate trust, or custodial account, or

(C) a plan sponsor as defined in Section 3(16)(B), such carrier, organization, bank, institution, or plan sponsor shall transmit and certify the accuracy of such information to the administrator within 120 days after the end of the plan year (or such other date as may be prescribed under regulations of the Secretary)

(3) (A) Except as provided in subparagraph (C), the administrator of an employee benefit plan shall engage, on behalf of all plan participants, an independent qualified public accountant, who shall conduct such an examination of any financial statements of the plan, and of other books and records of the plan, as the accountant may deem 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 by subsection (b) of this Section are presented fairly in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding year. Such examination shall be conducted in accordance with generally accepted auditing standards, and shall involve such tests of the books and records of the plan as are considered necessary by the independent qualified public accountant. The independent qualified public accountant shall also offer his opinion as to whether the separate schedules specified in subsection (b)(3) of this Section

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and the summary material required under Section 104(b)(3) present fairly, and in all material respects the information contained therein when considered in conjunction with the financial statements taken as a whole. The opinion by the independent qualified public accountant shall be made a part of the annual report. In a case where a plan is not required to file an annual report, the requirements of this

(B) In offering his opinion under this Section the accountant may rely on the correctness of any actuarial matter certified to by an enrolled actuary, if he so states his reliance.

(C) The opinion required by subparagraph (A) need not be expressed as to any statements required by Subsection (b)(3)(G) prepared by a bank or similar institution or insurance carrier regulated and supervised and subject to periodic examination by a State or Federal agency if such statements are certified by the bank, similar institution, or insurance carrier as accurate and are made a part of the annual report.

(D) For purposes of this Title, the term "qualified public accountant" means

(i) a person who is a certified public accountant, certified by a regulatory authority of a State;

(ii) a person who is a licensed public accountant, licensed by a regulatory authority of a State; or

(iii) a person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in States where there is no certification or licensing procedure for accountants.

(4) (A) The administrator of an employee pension benefit plan subject to the reporting requirement of Subsection (d) of this Section shall engage, on behalf of all plan participants, an enrolled actuary who shall be responsible for the preparation of the materials comprising the actuarial statement required under Subsection (d) of this Section. In a case where a plan is not required to file an annual report, the requirement of this paragraph shall not apply, and, in a case where by reason of Section 104(a)(2), a plan is required only to file a simplified report, the Secretary may waive the requirement of this paragraph.

(B) The enrolled actuary shall utilize such assumptions and techniques as are necessary to enable him to form an opinion as to whether the contents of the matters reported under Subsection (d) of this Section

(i) are in the aggregate reasonably related to the experience of the plan and to reasonable expectations; and

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(ii) represent his best estimate of anticipated experience under the plan. The opinion by the enrolled actuary shall be made with respect to, and shall be made a part of, each annual report.

(C) For purposes of this Title, the term "enrolled actuary" means an actuary enrolled under subtitle C of Title III of this Act.

(D) In making a certification under this section the enrolled actuary may rely on the correctness of any accounting matter under Section 103(b) as to which any qualified public accountant has expressed an opinion, if he so states his reliance.

(b) An annual report under this section shall include a financial statement containing the following information:

(1) with respect to an employee welfare benefit plan: a statement of assets and liabilities; a statement of changes in fund balance; and a statement of changes in financial position. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan, information concerning whether or not a tax ruling or determination letter has been obtained; and any other matters necessary to fully and fairly present the financial statements of the plan.

(2) with respect to an employee pension benefit plan: a statement of assets and liabilities, and a statement of changes in net assets available for plan benefits which shall include details of revenues and expenses and other changes aggregated by general source and application. In the notes to financial statements, disclosures concerning the following items shall be considered by the accountant: a description of the plan including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost), and any changes in such policies during the year; a description of any significant changes in plan benefits made during the period; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan, information concerning whether or not a tax ruling or determination letter has been obtained and any other matters necessary to fully and fairly present the financial statements of such pension plan.

(3) with respect to all employee benefit plans; the statement required under paragraph (1) or (2) shall have attached the following information in separate schedules:

(A) a statement of the assets and liabilities of the plan aggregated by

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categories and valued at their current value, and the same data displayed in comparative form for the end of the previous fiscal year of the plan;

(B) a statement of receipts and disbursements during the preceding twelve-month period aggregated by general sources and applications;

(C) a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessor, or similar party to the transaction (including a notation as to whether such party is known to be a party in interest), maturity date, rate of interest collateral, par or maturity value, cost, and current value;

(D) a schedule of each transaction involving a person known to be party in interest, the identity of such party in interest and his relationship or that of any other party in interest to the plan, a description of each asset to which the transaction relates; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan; expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction;

(E) a schedule of all loans or fixed income obligations which were in default as of the close of the plan's fiscal year or were classified during the year as uncollectable and the following information with respect to each loan on such schedule (including a notation as to whether parties involved are known to be parties in interest): the original principal amount of the loan, the amount of principal and interest received during the reporting year, the unpaid balance the identity and address of the obliger, a detailed description of the loan (including date of making and maturity, interest rate, the type and value of collateral, and other material terms), the amount of principal and interest overdue (if any) and an explanation thereof;

(F) a list of all leases which were in default or were classified during the year as uncollectable; and the following information with respect to each lease on such schedule (including a notation as to whether parties involved are known to be parties in interest): the type of property leased (and, in the case of fixed assets such as land, buildings, leasehold, and so forth, the location of the property), the identity of the lessor or lessee from or to whom the plan is leasing, the relationship of such lessors and lessees, if any, to the plan, the employer employee organization, or any other party in interest, the terms of the lease regarding rent, taxes, insurance, repairs, expenses, and renewal options; the date the leased property was purchased and its cost, the date the property was leased and its approximate value at such date, the gross rental receipts during the reporting period, expenses paid for the leased property during the reporting period, the net receipts from the lease, the amounts in arrears and a statement as to what steps have been taken to collect amounts due or otherwise remedy the default;

(G) if some or all of the assets of a plan or plans are held in a common or collective trust maintained by a bank or similar institution or in a separate account maintained by an insurance carrier or a separate trust maintained by a bank as trustee, the report shall include the most recent annual statement of assets and liabilities of such common or collective trust, and in the case of a separate

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account or a separate trust, such other information as is required by the administrator in order to comply with this Subsection; and

(H) a schedule of each reportable transaction, the name of each party to the transaction (except that, in the case of an acquisition or sale of a security on the market, the report need not identify the person from whom the security was acquired or to whom it was sold) and a description of each asset to which the transaction applies; the purchase or selling price in case of a sale or purchase, the rental in case of a lease, or the interest rate and maturity date in case of a loan, expenses incurred in connection with the transaction; the cost of the asset, the current value of the asset, and the net gain (or loss) on each transaction. For purposes of the preceding sentence, the term "reportable transaction" means a transaction to which the plan is a party if such transaction is

(i) a transaction involving an amount in excess of 3 percent of the current value of the assets of the plan;

(ii) any transaction (other than a transaction respecting a security) which is part of a series of transactions with or in conjunction with a person in a plan year, if the aggregate amount of such transaction exceeds 3 percent of the current value of the assets of the plan;

(iii) a transaction which is part of a series of transactions respecting one or more securities of the same issuer, if the aggregate amount of such transactions in the plan year exceeds 3 percent of the current value of the assets of the plan; or

(iv) a transaction with or in conjunction with a person respecting a security, if any other transaction with or in conjunction with such person in the plan year respecting a security is required to be reported by reason of clause (i).

(4) The Secretary may, by regulation, relieve any plan from filing a copy of a statement of assets and liabilities (or other information) described in paragraph (3)(G) if such statement and other information is filed with the Secretary by the bank or insurance carrier which maintains the common or collective trust or separate account.

(c) The administrator shall furnish as a part of a report under this Section the following information:

(1) The number of employees covered by the plan.

(2) The name and address of each fiduciary.

(3) Except in the case of a person whose compensation is minimal (determined

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under regulations of the Secretary) and who performs solely ministerial duties (determined under such regulations), the name of each person (including but not limited to, any consultant, broker, trustee, accountant, insurance carrier, actuary, administrator, investment manager, or custodian who rendered services to the plan or who had transactions with the plan) who received directly or indirectly compensation from the plan during the preceding year for services rendered to the plan or its participants, the amount of such compensation, the nature of his services to the plan or its participants, his relationship to the employer of the employees covered by the plan, or the employee organization, and any other office, position, or employment he holds with any party in interest.

(4) An explanation of the reason for any change in appointment of trustee, accountant, insurance carrier, enrolled actuary, administrator, investment manager, or custodian.

(5) Such financial and actuarial information including but not limited to the material described in subsections (b) and (d) of this section as the Secretary may find necessary or appropriate.

(d) With respect to an employee pension benefit plan (other than (A)) a profit sharing, savings, or other plan, which is an individual account plan, (B) a plan described in section 301(b), or (C) a plan described both in section 4021(b) and in paragraph (1), (2), (3), (4), (5), (6), or (7) of section 301(a)) an annual report under this section for a plan year shall include a complete actuarial statement applicable to the plan year which shall include the following:

(1) The date of the plan year, and the date of the actuarial valuation applicable to the plan year for which the report is filed.

(2) The date and amount of the contribution (or contributions) received by the plan for the plan year for which the report is filed and contributions for prior plan years not previously reported.

(3) The following information applicable to the plan year for which the report is filed: the normal costs, the accrued liabilities, an identification of benefits not included in the calculation; a statement of the other facts and actuarial assumptions and methods used to determine costs, and a justification for any change in actuarial assumptions or cost methods; and the minimum contribution required under section 302.

(4) The number of participants and beneficiaries, both retired and non-retired, covered by the plan.

(5) The current value of the assets accumulated in the plan, and the present value of the assets of the plan used by the actuary in any computation of the amount of contributions to the plan required under section 302 and a statement explaining the basis of such valuation of present value of assets.

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(6) Information required in regulations of the Pension Benefit Guaranty Corporation with respect to:

(A) the current value of the assets of the plan,

(B) the present value of all non-forfeitable benefits for participants and beneficiaries receiving payments under the plan,

(C) the present value of all non-forfeitable benefits for all other participants and beneficiaries,

(D) the present value of all accrued benefits which are not non-forfeitable (including a separate accounting of such benefits which are benefit commitments, as defined in Section 4001(a)(16)), and

(E) the actuarial assumptions and techniques used in determining the values described in subparagraphs (A) through (D).

(7) A certification of the contribution necessary to reduce the accumulated funding deficiency.

(8) A statement by the enrolled actuary

(A) that to the best of his knowledge the report is complete and accurate, and

(B) the requirements of Section 302(c)(3) (relating to reasonable actuarial assumptions and methods) have been complied with.

(9) A copy of the opinion required by subsection (a)(4).

(10) A statement by the actuary which discloses

(A) any event which the actuary has not taken into account, and

(B) any trend which, for purposes of the actuarial assumptions used, was not assumed to continue in the future, but only if, to the best of the actuary's knowledge, such event or trend may require a material increase in plan costs or

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required contribution rates.

(11) If the current value of the assets of the plan is less than 70 percent of the current liability under the plan (within the meaning of Section 302(d)(7)), the percentage which such value is of such liability.

(12) Such other information regarding the plan as the Secretary may by regulation require.

(13) Such other information as may be necessary to fully and fairly disclose the actuarial position of the plan.

Such actuary shall make an actuarial valuation of the plan for every third plan year, unless he determines that a more frequent valuation is necessary to support his opinion under Subsection (a)(4) of this Section.

(e) If some or all of the benefits under the plan are purchased from and guaranteed by an insurance company, insurance service, or other similar organization, a report under this Section shall include a statement from such insurance company, service, or other similar organization covering the plan year and enumerating

(1) the premium rate for subscription charge and the total premium or subscription charges paid to each such carrier, insurance service, or other similar organization and the approximate number of persons covered by each class of such benefits; and

(2) the total amount of premiums received, the approximate number of persons covered by each class of benefits, and the total claims paid by such company, service, or other organization; dividends or retroactive rate adjustments, commissions, and administrative service or other fees or other specific acquisition costs paid by such company, service, or other organization; any amounts held to provide benefits after retirement; the remainder of such premiums; and the names and addresses of the brokers, agents, or other persons to whom commissions or fees were paid, the amount paid to each, and for what purpose. If any such company, service, or other organization does not maintain separate experience records covering the specific groups it serves, the report shall include in lieu of the information required by the foregoing provisions of this paragraph (A) a statement as to the basis of its premium rate or subscription charge, the total amount of premiums or subscription charges received from the plan, and a copy of the financial report of the company, service or other organization and (B) if such company, service, or organization incurs specific costs in connection with the acquisition or retention of any particular plan or plans, a detailed statement of such costs.

Amendments

P.L. 101-239, Section 7881(j)(1):

Amended ERISA Section 103(d)(11) by striking "60 percent" and inserting "70 percent"

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and by striking "such percentage" and inserting "the percentage which such value is of such liability" effective with respect to reports required to be filed after December 31, 1987.

P.L. 100-203, Section 9342(a)(I):

Amended ERISA Section 103(d) by redesignating paragraphs (11) and (12) as paragraphs (12) and (13), respectively, and by inserting paragraph (11) to read as above, effective with respect to reports required to be filed after December 31, 1987.

P.L. 99-272, Section 11016(b)(I):

Amended ERISA Section 103(d)(6) to read as above, effective on April 7, 1986.

Prior to the amendment, ERISA Section 103(d)(6) read as follows:

(6) The present value of all of the plan's liabilities for non-forfeitable pension benefits allocated by the termination priority categories as set forth in Section 4044 of this Act, and the actuarial assumptions used in these computations. The Secretary shall establish regulations defining (for purposes of this Section) "termination priority categories" and acceptable methods, including approximate methods, for allocating the plan's liabilities to such termination priority categories.

P.L. 9-364, Section 307:

Added new Subsection 103(d)(10) to read as above and renumbered old subsections 103(d)(10) and (11) to be 103(11) and (12), respectively.

.09 Committee Report on P.L. 100-203 Conference Committee Report. Ways and Means Committee bill: The report that employees are required to receive annually is required to include a statement of the extent to which the plan is funded. This provision applies to plan years beginning after December 31, 1987.

Conference Agreement: The conference agreement follows the Ways and Means Committee bill, except that the requirement only applies to plans that are funded below 70 percent of current liability.

Education and Labor Committee bill: The bill deletes the provision under which the statute of limitations begins to run on the date a report is filed from which the plaintiff could reasonably be expected to have obtained knowledge of a breach of fiduciary liability.

Conference Agreement: The conference agreement follows the Education and Labor Committee bill.

This provision applies to reports filed after December 31, 1987.

Education and Labor Committee bill: The bill provides that the Secretary of Labor may assess a civil penalty of up to \$1,000 a day from the date of a plan administrator's failure or refusal to file an annual report. In addition, an annual report that has been rejected is not to be treated as having been filed for purposes of this penalty.

Conference Agreement: The conference agreement follows the Education and Labor Committee bill with the clarification that the penalty is to reflect the materiality of the failure. This provision applies for reports due after December 31, 1987.

.095 Senate Committee Report (P.L. 96-364). Under the bill, an actuary performing a plan valuation will be required to disclose events which could have a material adverse effect on the plan. Where such events occur after the date of the valuation but before the valuation is published so that they are not reflected in the valuation, the actuary would nevertheless be required to disclose their occurrence in an attachment or footnote to the valuation. The bill would also require the actuary to disclose trends which have occurred in the past but which he is assuming will not continue in the future. The Committees intend that in fulfilling these requirements, an enrolled actuary will make appropriate inquiries of plan sponsors but will not be required to make further inquiry unless, under the circumstances, further inquiry is considered necessary because of information already known to the

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actuary. The Committees expect that material failure to comply with the provision could be an important factor to be considered by the Joint Board for the Enrollment of Actuaries in a disentanglement proceeding. The Committees do not intend the provision to cause an actuary to assume the role of an auditor.

.10 Conference Committee Explanation (P.L. 93-406). Contents of annual report. The annual report generally is to include audited financial statements for both welfare plans and pensions plans. With respect to welfare plans the statement is to include a statement of assets and liabilities, a statement of changes in fund balance, and a statement of changes in financial position. With respect to employee pension plans the statement is to include a statement of assets and liabilities and a statement of changes in net assets available for plan benefits, including details as to revenues and expenses and other changes aggregated by general source and application.

In the notes to the annual financial statement, the accountant is to disclose any significant changes in the plan, material lease commitments and contingent liabilities, any agreements and transactions with persons known to be parties-in-interest, information as to whether a tax ruling or determination letter has been obtained, and any other relevant matters necessary to fairly present the financial status of the plan. In addition, in the case of employee pension plans the notes should also deal with funding policy (including policy with respect to prior service costs and changes in such policies during the year). An accountant may rely on the correctness of any actuarial matter certified by any enrolled actuary if the accountant indicates his reliance on such certification.

In addition to the audited financial statement, the annual report is to include for all employee benefit plans a statement on separate schedules showing among other things, a statement of plan assets and liabilities aggregated by categories, a statement of receipts and disbursements, a schedule of all assets held for investment purposes aggregated and identified by issuer, borrower, or lessee and a schedule of each transaction involving a person known to be a party-in-interest. Also, a schedule of all loans and leases in default at the end of the year or which are classified during the year as uncollectible is to be included in the annual report.

There is also to be supplied with the annual report a schedule listing each transaction which exceeds 3 percent of the value of the fund. If some or all of the assets of a plan are held in a common or collective trust maintained by a bank or similar institution the annual report is to include the most recent annual statement of assets and liabilities of the common or collective trust. (The Secretary of Labor will have authority to prescribe for the filing of a master copy of the annual statement of this common or collective trust in order to avoid duplicative filings of this statement by plans participating in this common or collective trust.)

With respect to persons employed by the plan the annual report is to include the name and address of each fiduciary, the name of each person who receives more than minimal compensation from the plan for services rendered, along with the amount of compensation (or who performs duties which are not ministerial), the nature of the services, and the relationship to the employer or any other party in interest to the plan. Also, the reasons for any changes in trustees, accountant, actuary, investment manager, or administrator are to be provided in the annual report.

As indicated in the discussion of the funding provisions, under the conference agreement, the annual report is to include an actuarial statement for all pension plans which are subject to the funding requirements of Title I. If plan benefits are purchased from, and guaranteed by, an insurance company, the annual report is to include the premiums paid, benefits paid, charges for administrative expenses, commissions and other information. The insurance carrier is to certify to the plan administrator the information needed to comply with the annual reporting requirements within 120 days after the close of the plan year, or within such other period as is prescribed by the Secretary of Labor.

The annual report for a plan is to be filed within 210 days after the close of the

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plan year or within such period of time as the Secretary of Labor may require in order to reduce the necessity for duplicate filing with the Internal Revenue Service. The Secretary of Labor may reject the filing of an annual report if he finds that it is incomplete or there is a material qualification in the accountant's or actuary's opinion. If a revised report is not submitted within 45 days after rejection, the Secretary may retain an accountant to perform an audit, or retain an actuary, whichever is appropriate, or bring a civil action for legal or equitable relief. The plan is to bear the costs of any expenses of an audit or actuarial report.

Accountant and actuary reports. Every plan is to retain on behalf of its participants an independent qualified public accountant who annually is to prepare an audited financial statement of the plan's operations. The accountant is to give an opinion as to whether the financial statements of the plan conform with generally accepted accounting principles and the statement is to be based upon an examination in accordance with generally accepted auditing standards. An accountant's opinion is not to be required for statements prepared by banks or similar institutions or an insurance carrier if the statements of the bank or insurance carrier are certified by the bank and are made part of an annual report. For purposes of this provision a qualified public accountant includes certified public accountants, licensed public accountants and any person certified by the Secretary as a qualified public accountant in accordance with regulations published by him for a person who practices in a State where there is no certification or licensing procedure for accountants. Further, to the extent a plan is not required to make an annual report to the Secretary of Labor an annual audit is not required (and an independent, qualified public accountant need not be retained). Also the Secretary of Labor may waive the requirement of an audited financial statement in cases where simplified annual reports are permitted to be filed.

Every plan subject to the funding requirements of Title I must retain an enrolled actuary who is to prepare an actuarial statement on an annual basis. This statement is to show the present value of all plan liabilities for non-forfeitable pension benefits allocated by the termination priority categories. The actuary is to supply a statement to be filed with the annual report as to his opinion as to whether the actuarial statements of the plan are reasonably related to the experience of the plan and to the reasonable expectations of the plan. The actuary is to use assumptions and techniques as are necessary to form an opinion as to whether the contents of the matters upon which he reports are in the aggregate reasonably related to the experience of the plan and to reasonable expectations, and represent his best estimate of anticipated experience under the plan. The actuarial statement is not required for plans which need not file annual reports, and may be waived by the Secretary of Labor for plans for which simplified annual reports are allowed.

#### Regulations

The following regulations on annual reporting requirements were adopted effective generally for plan years beginning in 1977, by FR Doc. 78-6073 under "Title 2 Labor," "Chapter XXV Pension and Welfare Benefit Programs, Department of Labor," "Part 252-Rules and Regulations for Reporting and Disclosure." The regulations were filed with the Federal Register on March 9, 1978, and published in the Federal Register on March 10, 1978 (41 FR 10130).

#### Subpart C Annual Report Requirements

Section 2520.103-1 Contents of the annual report.

(a) General. The administrator of a plan required to file an annual report in accordance with Section 104(a)(1)(A) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the limited exemption or alternative method of compliance described in paragraph (a)(2) of this section.

(1) The annual report shall contain the information prescribed in section 103 of the Act.

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(2) Under the authority of sections 104(a)(3) and 110 of the Act, a limited exemption or alternative method of compliance is prescribed for employee welfare and pension benefit plans, respectively, which cover 100 or more participants at the beginning of the plan year. A plan electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) of this Section and shall furnish a summary annual report as prescribed in Section 2520.104b-10. (Amended on March 1, 1989 by 54 FR 8624.)

(b) Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance. Except as provided in paragraph (d) of this Section and in Sections 2520.103-2 and 2520.104-44, the annual report of an employee benefit plan covering 100 or more participants at the beginning of the plan year which elects the limited exemption or alternative method of compliance described in paragraph (a)(2) shall include:

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information," Schedule B "Actuarial Information," Schedule C "Service Provider/Trustee/Service Provider Termination Information," and the financial schedules described in Section 2520.103-10. See the instructions ("What to File" and "Specific Instructions") for this form. (Amended on March 1, 1989 by 54 FR 8624.)

(2) Separate financial statements (in addition to the information required by paragraph (b)(1) of this Section), if such financial statements are prepared in order for the independent qualified public accountant to form the opinion required by Section 103(a)(3)(A) of the Act and Section 2520.103-1(b)(5). These statements shall include the following:

(i) Except as provided in Section 2520.103-7, a statement of assets and liabilities at current value presented in comparative form for the beginning and end of the year. The statement of plan assets and liabilities shall include the assets and liabilities required to be reported on Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on Form 5500. (Amended on March 1, 1989 by 54 FR 8624.)

(ii) Separate or combined statements of plan income and expenses and of changes in net assets which include the categories of income, expense, and changes in assets required to be reported on the Form 5500; however, the income, expense, and changes in net assets may be aggregated into categories in a manner other than that used on Form 5500. (Amended on March 1, 1989 by 54 FR 8624.)

(3) Notes to the financial statements described in paragraphs (b)(1) or (2) of this Section which contain a description of the accounting principles and practices reflected in the financial statements and, if applicable, variances from generally accepted accounting principles; a description of the plan, including any significant changes in the plan made during the period and the impact of such changes on benefits; the funding policy (including policy with respect to prior service cost) and any changes in such policy from the prior year, a description of material lease commitments, other commitments, and contingent liabilities, a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; information concerning whether or not a tax ruling or determination letter has been obtained; an

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explanation of the differences, if any, between the information contained in the separate financial statements and the assets, liabilities, income, expenses and changes in net assets as required to be reported on the Form 5500, and any other matters necessary to fully and fairly present the financial condition of the plan. (Amended on March 1, 1989 by 54 FR 8624.)

(4) In the case of a plan, some or all of the assets of which are held in a pooled separate account maintained by an insurance company, or a common or collective trust maintained by a bank or similar institution, a copy of the annual statement of assets and liabilities of such account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made as required under section 2520.103-3 or section 2520.103-4. See section 2520.103-9 for direct filing with the Secretary of such statements by banks or insurance companies.

(5) A report of an independent qualified public accountant.

(i) Technical requirements. The accountant's report

(A) shall be dated;

(B) shall be signed manually;

(C) shall indicate the city and state where issued; and

(D) shall identify without detailed enumeration the financial statements and schedules covered by the report.

(ii) Representations as to the audit. The accountant's report

(A) shall state whether the audit was made in accordance with generally accepted auditing standards; and

(B) shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this section is contained in sections 2520.103-8 and 2520.103-12. (Amended by 51 FR 41285 on Nov. 13, 1986; amended on March 1, 1989 by 54 FR 8624.)

(iii) Opinion to be expressed. The accountant's report shall state clearly:

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(A) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(B) The opinion of the accountant as to the consistency of the application of the accounting principles with the application of such principles in the preceding year or as to any changes in such principles which have a material effect on the financial statements.

(iv) Exceptions. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of the matters to which the accountant takes exception on the related financial statements given. The matters to which the accountant takes exception shall be further identified as (A) those that are the result of DOL regulations, and (B) all others.

(c) Contents of the annual report for plans with fewer than 100 participants. Except as provided in paragraph (d) of this Section and in Sections 2520.104-43 and 2520.104a-6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall be a completed Form 5500-C "Return/Report of Employee Benefit Plan (with fewer than 100 participants)," or a completed 5500-R "Registration Statement of Employee Benefit Plan (with fewer than 100 Participants)," and any statements or schedules which are required to be attached to these forms, including Schedule A "Insurance Information," and Schedule B "Actuarial Information." See the instructions ("What to File" and "Specific Instructions") for these forms. (Amended on July 29, 1980 by 45 FR 51446; amended on March 1, 1989 by 54 FR 8624.)

(d) Special rule. If a plan has between 80 and 120 participants (inclusive) as of the beginning of the plan year, the plan may elect to file the same category of form (i.e. either Form 5500 and attachments or Form 5500-C, or R) that is filed the previous year. (Added on July 29, 1980 by 45 FR 51446; amended on March 1, 1989 by 54 FR 8624.)

(e) Plans which participate in a master trust. The plan administrator of a plan which participates in a master trust shall file an annual report on Form 5500, 5500-C, or 5500-R, as appropriate, in accordance with the specific instructions relating to master trusts on those forms and instructions thereto. For purposes of annual reporting, a master trust is a trust for which a regulated financial institution serves as trustee or custodian (regardless of whether such institution exercises discretionary authority or control respecting the management of assets held in the trust) and in which assets of more than one plan sponsored by a single employer or by a group of employers under common control are held. For purpose of this paragraph, a regulated financial institution is a bank, trust company, or similar financial institution regulated, supervised, and subject to periodic examination by a State or Federal agency. Common control is determined on the basis of all relevant facts and circumstances (whether or not such employers are incorporated). (Added on December 10, 1981, by 46 FR 61074; amended on March 1, 1989 by 54 FR 8624.)

Section 2520.103-2 Contents of the annual report for a group insurance arrangement.

(a) General.

(1) A trust or other entity described in section 2520.104-43(b) that files an

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annual report for purposes of Section 2520.104-43 shall include in such report the items set forth in paragraph (b) of this Section.

(b) Contents.

(1) A completed Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)" and any statements or schedules required to be attached to the form, including Schedule A "Insurance Information," Schedule C "Service Provider/Trustee/ Service Provider Termination Information," and the financial schedules described in Section 2520.103-10. See the instructions ("What to File" and "Specific Instructions") for this form. (Amended on March 1, 1989 by 54 FR 8624.)

(2) Separate financial statements (in addition to the information required by paragraph (b)(1) of this Section), if such financial statements are prepared in order for the independent qualified public accountant to form the opinion required by Section 103(a)(3)(A) of the Act and Section 2520.103-2(b)(5). These financial statements shall include the following:

(i) Except as provided in Section 2520.103-7, a statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. The statement of trust assets and liabilities shall include the assets and liabilities required to be reported on the Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on Form 5500. (Amended on March 1, 1989 by 54 FR 8624.)

(ii) Separate or combined statements of all trust income and expenses and changes in net assets which includes the categories of income, expense, and changes in assets required to be reported on the Form 5500; however, the income, expense, and changes in assets may be aggregated into categories in a manner other than that used on Form 5500. (Amended on March 1, 1989 by 54 FR 8624.)

(3) Notes to the financial statements described in paragraphs (b)(1) or (2) of this Section which contain a description of the accounting principles and practices reflected in the financial statements and, if applicable, variances from generally accepted accounting principles; a description of the group insurance arrangement including any significant changes in the group insurance arrangement made during the period and the impact of such changes on benefits; a description of material lease commitments, other commitments, and contingent liabilities; a description of agreements and transactions with persons known to be parties in interest; a general description of priorities upon termination of the plan; an explanation of the differences, if any, between the information contained in the separate financial statements and the assets, liabilities, income, expenses and changes in net assets as required to be reported on the Form 5500; and any other matters necessary to fully and fairly present the financial condition of the plan. (Amended on March 1, 1989 by 54 FR 8624.)

(4) In the case of a group insurance arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or a common or collective trust maintained by a bank, a copy of the annual statement of assets and liabilities of such separate account or trust for the fiscal year of the account or trust which ends with or within the plan year for which the annual report is made, as required under Section 2520.103-3 or Section 2520.103-4. See also Section 2520.103-9 for direct filing with the Secretary of Labor of such statements

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by banks or insurance compares.

- (5) A report of an independent qualified public accountant.
- (i) Technical requirements. The accountant's report where issued; and
- (6) Shall identify without detailed enumeration the financial statements and schedules covered by the report.
  - (i) Representations as to the audit. The accountant's report
    - (A) Shall be dated;
    - (B) Shall be signed manually;
    - (C) Shall indicate the city and state;
    - (D) Shall state whether the audit was made in accordance with generally accepted auditing standards; and
    - (E) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this Section is contained in Section 2520.103-8.
  - (iii) Opinion to be expressed. The accountant's report shall state clearly:
    - (A) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and
    - (B) The opinion of the accountant as to the consistency of the application of the accounting principles with the application of such principles in the preceding year, or as to any changes in such principles which have a material effect on the financial statements.

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(iv) Exceptions. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of the matters to which the accountant takes exception on the related financial statements given. The matters to which the accountant takes exception shall be further identified as to (a) those that are the result of DOL regulations and (b) all others. (Added March 9, 1978, by 43 F.R. 10130.)

Section 2520.103-3 Exemption from certain annual reporting requirements for assets held in a common or collective trust.

(a) General. Under the authority of section 103(b)(3)(G) of the Act, a plan whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution which meets the requirements of paragraph (b) of this Section shall include as part of the annual report required to be filed under section 2520.104a-5 or section 2520.104a-6 the annual statement of assets and liabilities of the common or collective trust for the fiscal year of the trust ending with or within the plan year for which the annual report is made and other information as described in paragraph (c) of this Section. Such plan is not required to include in the annual report any information concerning the individual transactions of the common or collective trust. This exemption has no application to assets not held in such trusts.

(b) Application. This provision applies only to a plan some or all of the assets of which are held in a common or collective trust maintained by a bank, trust company, or similar institution regulated and supervised and subject to periodic examination by a State or Federal agency. For purposes of this Section, (1) a common or collective trust is a trust which consists of the assets of two or more participating entities and is maintained for the collective investment and reinvestment of assets contributed thereto, and (2) plans maintained by a single employer or by the members of a controlled group of corporations, as defined in Section 1563(a) of the Internal Revenue Code of 1954, shall be deemed to be a single participating entity.

(c) Contents.

(1) A plan which meets the requirements of paragraph (b) of this Section shall include in the Annual Return/Report and in the separate statements and schedules of the annual report, information regarding the value of the units of participation in the common or collective trust held by the plan and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust. However, the annual report is not required to include any information regarding the individual transactions of the common or collective trust.

(2) The annual report of such plan shall also include the annual statement by the bank, trust company, or similar institution of the assets and liabilities of the common or collective trust for the fiscal year of the trust ending with or within the plan year for which the annual report is made.

(3) The statement of assets and liabilities of the common or collective trust is not required to be attached to the annual report filed by the administrator pursuant to section 2520.104a-5 or section 2520.104a-6 if the administrator meets the requirements of section 2520.103-9 regarding direct filing of the statement of assets and liabilities of the common or collective trust by the bank, trust company or similar institution. (Added March 9, 1978, by 43 FR 10130.)

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Section 2520.103-4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account. -

(a) General. Under the authority of Section 103(b)(3)(G) of the Act, a plan whose assets are held in whole or in part in a pooled separate account of an insurance carrier which meets the requirements of paragraph (b) of this Section shall include as a part of the annual report required to be filed under Section 2520.104a-5 or Section 2520.104a-6 the annual statement of assets and liabilities of the pooled separate account for the fiscal year of the account ending with or within the plan year for which the annual report is made, and other information as described in paragraph (c) of this Section. Such plan is not required to include in the annual report any information concerning the individual transactions of the pooled separate account. This exemption has no application to assets not held in such a pooled separate account.

(b) Application. This provision applies only to a plan some or all of the assets of which are held in a pooled separate account of an insurance carrier regulated and supervised and subject to periodic examination by a State agency. For purposes of this Section, (1) a pooled separate account is an account which consists of the assets of two or more participating entities and is maintained for the collective investment and reinvestment of assets contributed thereto, and (2) plans maintained by a single employer or by members of a controlled group of corporations, as defined in Section 1563(a) of the Internal Revenue Code of 1954, shall be deemed to be a single participating entity.

(c) Contents.

(1) A plan which meets the requirements of paragraph (b) of this Section shall include in the Annual Return/Report and in the separate statements and schedules of the annual report, prescribed information regarding the value of the units of participation in the pooled separate account held by the plan and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account. However, the annual report is not required to include any information regarding the individual transactions of the pooled separate account.

(2) The annual report of such plan shall also include the annual statement by the insurance carrier of the assets and liabilities of the pooled separate account for the fiscal year of the separate account ending with or within the plan year for which the annual report is made.

(3) The statement of assets and liabilities of the pooled separate account is not required to be attached to the annual report filed by the administrator pursuant to Section 2520.104a-5 or Section 2520.104a-6 if the administrator meets the requirements of Section 2520.103-9 regarding direct filing of the statement of assets and liabilities of the pooled separate account by an insurance carrier. (Added March 9, 1978, by 43 FR 10130).

Section 2520.103-5 Transmittal and certification of information to plan administrator for annual reporting purposes. -

(a) General. In accordance with Section 103(a)(2) of the Act, an insurance carrier or other organization which provides benefits under the plan or holds plan assets, a bank or similar institution which holds plan assets, or a plan sponsor shall transmit and certify such information as needed by the administrator to file the annual report under Section 104(a)(1)(A) of the Act and Section 2520.104a-5 or Section 2520.104a-6:

(1) within 9 months after the close of the plan year which begins in 1975 or September 30, 1976, whichever is later, and

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(2) within 120 days after the close of any plan year which begins after December 31, 1975.

(b) Application. This requirement applies with respect to  
(1) An insurance carrier or other organization which:

(i) Provides from its general asset account funds for the payment of benefits under a plan, or

(ii) Holds assets of a plan in a separate account;

(2) A bank, trust company, or similar institution which holds assets of a plan in a common or collective trust, separate trust, or custodial account; and

(3) A plan sponsor as defined in Section 3(16)(B) of the Act.

(c) Contents. The information required to be provided to the administrator shall include

(1) In the case of an insurance carrier or other organization which:

(i) Provides funds from its general asset account for the payment of benefits under a plan upon request of the plan administrator, such information as is contained within the ordinary business records of the insurance carrier or other organization and is needed by the plan administrator to comply with the requirements of Section 104(a)(1)(A) of the Act and Section 2520.104a-5 or Section 2520.104a-6;

(ii) Holds assets of a plan in a pooled separate account which is exempted from certain reporting requirements under Section 2520.103-4, a copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account that ends with or within the plan year for which the annual report is made, and a statement of the value of the plan's units of participation in the separate account;

(iii) Holds assets of a plan in a separate account which is not exempted from certain reporting requirements under Section 2520.103-4, a listing of all transactions of the separate account and, upon request of the plan administrator, such information as is contained within the ordinary business records of the insurance carrier and is needed by the plan administrator to comply with

(A) Shall state whether the audit was made in accordance with generally accepted auditing standards; and

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(B) Shall designate any auditing procedures deemed necessary by the accountant under the circumstances of the particular case, which have been omitted, and the reasons for their omission. Authority for the omission of certain procedures which independent accountants might ordinarily employ in the course of an audit made for the purpose of expressing the opinions required by paragraph (b)(5)(iii) of this section is contained in Section 2520.103-8.

(iii) opinion to be expressed. The accountant's report shall state clearly:

(A) The opinion of the accountant in respect of the financial statements and schedules covered by the report and the accounting principles and practices reflected therein; and

(B) The opinion of the accountant as to the consistency of the application of the accounting principles with the application of such principles in the preceding year, or as to any changes in such principles which have a material effect on the financial statements.

(iv) Exceptions. Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated, and, to the extent practicable, the effect of the matters to which the accountant takes exception on the related financial statements given. The matters to which the accountant takes exception shall be further identified as to (a) those that are the result of DOL regulations and (b) all others. (Added March 9, 1978, by 43 F.R. 10130.)

Section 2520.103-3 Exemption from certain annual reporting requirements for assets held in a common or collective trust.

(a) General. Under the authority of Section 103(b)(3)(G) of the Act, a plan whose assets are held in whole or in part in a common or collective trust maintained by a bank, trust company, or similar institution which meets the requirements of paragraph (b) of this Section shall include as part of the annual report required to be filed under Section 2520.104a-5 or Section 2520.104a-6 the annual statement of assets and liabilities of the common or collective trust for the fiscal year of the trust ending with or within the plan year for which the annual report is made and other information as described in paragraph (c) of this Section. Such plan is not required to include in the annual report any information concerning the individual transactions of the common or collective trust. This exemption has no application to assets not held in such trusts.

(b) Application. This provision applies only to a plan some or all of the assets of which are held in a common or collective trust maintained by a bank, trust company, or similar institution regulated and supervised and subject to periodic examination by a State or Federal agency. For purposes of this Section, (1) a common or collective trust is a trust which consists of the assets of two or more participating entities and is maintained for the collective investment and reinvestment of assets contributed thereto, and (2) plans maintained by a single employer or by the members of a controlled group of corporations, as defined in Section 1563(a) of the Internal Revenue Code of 1954, shall be deemed to be a single participating entity.

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(c) Contents.

(1) A plan which meets the requirements of paragraph (b) of this Section shall include in the Annual Return/Report and in the separate statements and schedules of the annual report, information regarding the value of the units of participation in the common or collective trust held by the plan and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust. However, the annual report is not required to include any information regarding the individual transactions of the common or collective trust.

(2) The annual report of such plan shall also include the annual statement by the bank, trust company, or similar institution of the assets and liabilities of the common or collective trust for the fiscal year of the trust ending with or within the plan year for which the annual report is made.

(3) The statement of assets and liabilities of the common or collective trust is not required to be attached to the annual report filed by the administrator pursuant to Section 2520.104a-5 or Section 2520.104a-6 if the administrator meets the requirements of Section 2520.103-9 regarding direct filing of the statement of assets and liabilities of the common or collective trust by the bank, trust company or similar institution. (Added March 9, 1978, by 43 FR 10130.)

Section 2520.103-4 Exemption from certain annual reporting requirements for assets held in an insurance company pooled separate account. -

(a) General. Under the authority of Section 103(b)(3)(G) of the Act; a plan whose assets are held in whole or in part in a pooled separate account of an insurance carrier which meets the requirements of paragraph (b) of this Section shall include as a part of the annual report required to be filed under Section 2520.104a-5 or Section 2520.104a-6 the annual statement of assets and liabilities of the pooled separate account for the fiscal year of the account ending with or within a carrier or other organization which provides benefits under the plan or holds plan assets, a bank or the plan year for which the annual report is made, and other information as described in paragraph (c) of this Section. Such plan is not required to include in the annual report any information concerning the individual transactions of the pooled separate account. This exemption has no application to assets not held in such a pooled separate account.

(b) Application. This provision applies only to a plan some or all of the assets of which are held in a pooled separate account of an insurance carrier regulated and supervised and subject to periodic examination by a State agency. For purposes of this Section, (1) a pooled separate account is an account which consists of the assets of two or more participating entities and is maintained for the collective investment and reinvestment of assets contributed thereto, and (2) plans maintained by a single employer or by members of a controlled group of corporations, as defined in Section 1563(a) of the Internal Revenue Code of 1954, shall be deemed to be a single participating entity.

(c) Contents.

(1) A plan which meets the requirements of paragraph (b) of this Section shall include in the Annual Return/Report and in the separate statements and schedules of the annual report, prescribed information regarding the value of the units of participation in the pooled separate account held by the plan and transactions involving the acquisition and disposition by the plan units of participation in the pooled separate account. However, the annual report is not required to include any information regarding the individual transactions of the pooled separate account.

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(2) The annual report of such plan shall also include the annual statement by the insurance carrier of the assets and liabilities of the pooled separate account for the fiscal year of the separate account ending with or within the plan year for which the annual report is made.

(3) The statement of assets and liabilities of the pooled separate account is not required to be attached to the annual report filed by the administrator pursuant to Section 2520.104a-5 or Section 2520.104a-6 if the administrator meets the requirements of Section 2520.103-9 regarding direct filing of the statement of assets and liabilities of the pooled separate account by an insurance carrier.

Section 2520.103-5 Transmittal and certification of information to plan administrator for annual reporting purposes. -

(a) General. In accordance with Section 103(a)(2) of the Act, an insurance carrier of other organization which provides benefits under the plan or holds plan assets, or a plan sponsor shall transmit and certify such information as needed by the administrator to file the annual report under Section 104(a)(1)(A) of the Act and Section 2520.104a-5 or Section 2520.104a-6:

(1) within 9 months after the close of the plan year which begins in 1975 or September 30, 1976, whichever is later, and

(2) within 120 days after the close of the plan year which begins after December 31, 1975.

(b) Application. This requirement applies with respect to  
(1) An insurance carrier or other organization which:

(i) Provides from its general asset account funds for the payment of benefits under a plan, or

(ii) Holds assets of a plan in a separate account;

(2) A bank, trust company, or similar institution which holds assets of a plan in common or collective trust, separate trust, or custodial account; and

(3) A plan sponsor as defined in Section 3(16)(B) of the Act.

(c) Contents. The information required to be provided to the administrator shall include

(1) In the case of an insurance carrier or other organization which:

(i) Provides funds from its general asset account for the payment of benefits

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under a plan, upon request of the plan administrator, such information as is contained within the ordinary business records of the insurance carrier of other organization and is needed by the plan administrator to comply with the requirements of Section 104(a)(1)(A) of the Act and Section 2520.204a-5 or Section 2520.204a.

(ii) Holds assets of a plan in a pooled separate account which is exempted from certain reporting requirements under Section 2520.103-4, a copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account that ends with or within the plan year for which the annual report is made, and a statement of the value of the plan's units of participation in the separate account;

(iii) Holds assets of a plan separate account which is not exempted from certain reporting requirements under Section 2520.103-4, a listing of all transactions of the separate account and, upon request of the plan administrator, such information as is contained within the ordinary business records of the insurance carrier and is needed by the plan administrator to comply with the requirements of 104(a)(1)(A) of the Act and Section 2520.104a-6.

(2) In the case of a bank, trust company, or similar institution holding assets of a plan

(i) In a common or collective trust which is exempted from certain reporting requirements under Section 2520.103-3, a copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such trust that ends with or within the plan year for which the annual report is made, and a statement of the value of the plan's units of participation in the common or collective trust.

(ii) In a trust which is not exempted from certain reporting requirements under Section 2520.103-3, a listing of all transactions of the separate trust and, upon request of the plan administrator, such information as is contained within the ordinary business records of the bank, trust company, or similar institution and is needed by the plan administrator to comply with the requirements of Section 104(a)(1)(A) of the Act and Section 2520.104a-5.

(iii) In a custodial account, upon request of the plan administrator, such information as is contained within the ordinary business records of the bank, trust company, or similar institution and is needed by the plan administrator to comply with the requirements of Section 104(a)(1)(A) of the Act and Section 2520.104a-5 or Section 2520.104a-6.

(3) In the case of a plan sponsor, a listing of all transactions directly or indirectly involving plan assets engaged in by the plan sponsor and such information as is needed by the plan administrator to comply with the requirements of Section 104(a)(1)(A) of the Act and Section 2520.104a-5 or Section 2520.104a-6.

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(d) Certification.

(1) An insurance carrier or other organization, a bank, trust company, or similar institution, or plan sponsor, as described in paragraph (b) of this Section, shall certify to the accuracy and completeness of the information described in paragraph (c) of this Section by a written declaration which is signed by a person authorized to represent the insurance carrier, bank, or plan sponsor. Such certification will serve as a written assurance of the truth of the facts stated therein.

(2) Example of Certification. The XYZ Bank (Insurance Carrier) hereby certifies that the foregoing statement furnished pursuant to 29 CFR 2520.103-5(c) is complete and accurate. (Added March 9, 1978, by 43 FR 10130.)

Section 2520.103-6 Definition of reportable transaction for Annual Return/Report. -

(a) General. For purposes of preparing the schedule of reportable transactions described in Section 2520.103-10(b)(6), and subject to the exceptions provided in Section 2520.103-3 and 2520.103-4 with respect to transactions by a common or collective trust or pooled separate account, a reportable transaction includes any transaction or series of transactions described in paragraph (c) of this section. (Corrected April 4, 1978, by 43 FR 14009.)

(b) Definitions.

(1) (i) Except as provided in paragraph (b)(1)(ii) and in paragraphs (c)(2) and (d)(1)(vi) (relating to assets acquired or disposed of during the plan year), "current value" shall mean the current value, as defined in Section 3(26) of the Act, of plan assets as of the beginning of the plan year, or the end of the previous plan year.

(ii) with respect to schedules of reportable transactions for plan years beginning in 1985, the current value of plan assets for the beginning of the plan year, or the end of the previous plan year, shall be the amount shown on line 13(h) of Form 5500 Annual Return/Report.

(2) (i) A "transaction with respect to securities" is any purchase, sale, or exchange of securities. A transaction with respect to securities for purposes of this Section occurs on either the trade date or settlement date of a purchase, sale, or exchange of securities; either the trade date or settlement date must be used consistently during the plan year for the purposes of this Section. For the purposes of this Section, except as provided in paragraph (b)(2)(ii) of this Section, "securities" includes a unit of participation in a common or collective trust or a pooled separate account.

(ii) Solely for purposes of paragraph (c)(1)(iv) of this Section, the term "securities", as it applies to any transaction involving a bank or insurance company regulated by a Federal or State agency, an investment company registered under the Investment Company Act of 1940, or a broker-dealer registered under the Securities Exchange Act of 1934, shall not include:

(A) Debt obligations of the United States or any United States agency with a

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maturity of not more than one year;

(B) Debt obligations of the United States or any United States agency with a maturity of more than one year if purchased or sold, under a repurchase agreement having a term of less than 91 days;

(C) Interests issued by a company registered under the Investment Company Act of 1940;

(D) Bank certificates of deposit with a maturity of not more than one year;

(E) Commercial paper with a maturity of not more than nine months if it is ranked in the highest rating category for commercial paper by at least two nationally recognized statistical rating services and is issued by a company required to file reports under Section 13 of the Securities Exchange Act of 1934;

(F) Participations in a bank common or collective trust;

(G) Participations in an insurance company pooled separate account;

(3) (i) Except as provided by paragraph (b)(3)(ii) of this Section, a transaction is "with or in conjunction with a person" for purposes of this Section if that person benefits from, executes, facilitates, participates, promotes, or solicits a transaction or part of a transaction involving plan assets.

(ii) solely for the purposes of paragraph (c)(1)(iv) of this Section, a transaction shall not be considered "with or in conjunction with a person" if:

(A) That person is a broker-dealer registered under the Securities Exchange Act of 1934;

(B) The transaction involves the purchase or sale of securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or quoted on NASDAQ; and

(C) The broker-dealer does not purchase or sell securities involved in the transaction for its own account or the account of an affiliated person.

(c) Application.

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(1) Except as provided in paragraph (c)(4) of this Section, this provision applies to

(i) A transaction within the plan year, with respect to any plan asset, involving an amount in excess of 3 percent of the current value of plan assets;

(ii) Any series of transactions (other than transactions with respect to securities) within the plan year with or in conjunction with the same person which, when aggregated, regardless of the category of asset and the gain or loss on any transaction, involves an amount in excess of 3 percent of the current value of plan assets;

(iii) Any transaction within the plan year involving securities of the same issue if within the plan year any series of transactions with respect to such securities, when aggregated, involves an amount in excess of 3 percent of the current value of plan assets; and

(iv) Any transaction within the plan year with respect to securities with or in conjunction with a person if any prior or subsequent single transaction within the plan year with such person with respect to securities exceeds 3 percent of the current value of plan assets.

(2) For purposes of determining whether any 3 percent transactions occur, the "current value" of an asset acquired or disposed of during the plan year is the current value, as defined in Section 3(26) of the Act, at the time of acquisition or disposition of such asset.

(3) Plans whose assets are held in whole or in part in a common or collective trust or a pooled separate account, as provided in Sections 2520.103-3 and 2520.103-4, and which satisfy the requirements of those sections, are not required to prepare schedules of reportable transactions with respect to the individual transactions of the common or collective trust or pooled separate account.

(4) For plan years beginning on or after January 1, 1988, 5 percent shall be substituted for 3 percent in paragraphs (c)(1) and (2) of this Section for purposes of determining whether a transaction or series of transactions constitutes a reportable transaction under this Section. (Amended on March 1, 1989 by 54 FR 8624.)

(d) Contents.

(1) The schedule of transactions shall include the following information as to each transaction or series of transactions:

(i) The name of each party, except that in the case of a transaction or series of transactions involving a purchase or sale of a security on the market, the schedule need not include the person from whom it was purchased or to whom it was

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sold. A purchase or sale on the market is a purchase or sale of a security through a registered broker-dealer acting as a broker under the Securities Exchange Act of 1934;

(ii) A brief description of each asset;

(iii) The purchase or selling price in the case of a purchase or sale, the rental in the case of a lease, and the amount of principal, interest rate, payment schedule (e.g., fully amortized, partly amortized with balloon) and maturity date in the case of a loan;

(iv) Expenses incurred, including, but not limited to, any fees or commissions;

(v) The cost of any asset;

(vi) The current value of any asset acquired or disposed of at the time of acquisition or disposition; and

(vii) The net gain or loss.

(2) The schedule of transactions with respect to a series of transactions described in subparagraph (c)(1)(iii) may include the following information for each issue in lieu of the information prescribed in paragraphs (d)(1)(i) (vii):

(i) The total number of purchases of such securities made by the plan within the plan year;

(ii) The total number of sales of such securities made by the plan within the plan year;

(iii) The total dollar value of such;

(iv) The total dollar value of such sales;

(v) The net gain or loss as a result of them.

(e) Examples. These examples are effective for reporting for plan years

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beginning on or after January 1, 1988.

(1) At the beginning of the plan year, XYZ plan has 10 percent of the current value of its plan assets invested in ABC common stock. Halfway through the plan year, XYZ purchases ABC common stock in a single transaction in an amount equal to 6 percent of the current value of plan assets. At about this time, XYZ plan also purchases a commercial development property in an amount equal to 8 percent of the current value of plan assets. Under paragraph (c)(1)(i) of this Section, the 6 percent stock transaction is a reportable transaction for the plan year because it exceeds 5 percent of the current value of plan assets. The 8 percent land transaction is also reportable under paragraph (c)(1)(i) of this Section because it exceeds 5 percent of the current value of plan assets.

(2) During the plan year, AAA plan purchases a commercial lot from ZZZ corporation at a cost equal to 2 percent of the current value of the plan assets. Two months later, MA plan loans ZZZ corporation an amount of money equal to 3.5 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, the plan has engaged in a reportable series of transactions with or in conjunction with the same person, ZZZ corporation, which when aggregated involves 5.5 percent of plan assets.

(3) During the plan year NMN plan sells to OPO corporation a commercial property that represents 3.5 percent of the current value of plan assets. OPO simultaneously executes a note and mortgage on the purchased property to NMN which represents 3 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this Section, NMN has engaged in a reportable series of transactions with or in conjunction with the same person, OPO corporation, consisting of a simultaneous sale of property and a loan, which, when aggregated, involves 6.5 percent of the current value of plan assets.

(4) At the beginning of the plan year, ABC plan has 10 percent of the current value of plan assets invested equally in a combination of XYZ Corporation common stock and XYZ preferred stock. One month into the plan year, ABC sells some of its XYZ common stock in an amount equal to 2 percent of the current value of plan assets.

(i) Six weeks later the plan sells XYZ preferred stock in an amount equal to 4 percent of the current value of plan assets. A reportable series of transactions has not occurred because only transactions involving securities of the same issue are to be aggregated under paragraph (c)(1)(iii) of this Section.

(ii) Two weeks later when the ABC plan purchases XYZ common stock in an amount equal to 3.5 percent of the current value of plan assets, a reportable series of transactions under paragraph (c)(1)(iii) of this Section has occurred. The sale of XYZ common stock worth 2 percent of plan assets and the purchase of XYZ common stock worth 3.5 percent of plan assets aggregate to exceed 5 percent of the total value of plan assets.

(5) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries in an amount equal to 6 percent of plan assets. The common stock of Able Industries is not listed on any national securities exchange or quoted on NASDAQ. This purchase is a reportable transaction under

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paragraph (c)(1)(i) of this Section. Three months later, Plan X purchases short term debt obligations of Charley Company through broker-dealer Y in the amount of 0.2 percent of plan assets. This purchase is also a reportable transaction under the provisions of paragraph (c)(1)(iv) of this Section.

(6) At the beginning of the plan year, Plan X purchases from Bank B certificates of deposit having a 180 day maturity in an amount equal to 6 percent of plan assets. Bank B is a national bank regulated by the Comptroller of the Currency. This purchase is a reportable transaction under paragraph (c)(1)(i) of this Section. Three months later, Plan X purchases through Bank B 91-day Treasury bills in the amount of 0.2 percent of plan assets. This purchase is not a reportable transaction under paragraph (c)(1)(iv) of this Section because the purchase of the Treasury bills as well as the purchase of the certificates of deposit are not considered to involve a security under the definition of "securities" in paragraph (b)(2)(ii) of this Section. (Corrected April 4, 1978, by 43 FR 14009; amended on March 1, 1989 by 54 FR 8624.)

(7) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries, a New York Stock Exchange listed security, in an amount equal to 6 percent of plan assets. This purchase is a reportable transaction under paragraph (c)(1)(i) of this Section. Three months later, Plan X purchases through broker-dealer Y acting as agent, common stock of Baker Corporation, also a New York Stock Exchange listed security, in an amount equal to 0.2 percent of plan assets. This latter purchase is not a reportable transaction under paragraph (c)(1)(iv) of this Section because it is not a transaction "with or in conjunction with a person" pursuant to paragraph (b)(3)(ii) of this Section. (Added March 9, 1978 by 43 FR 10130; amended on March 1, 1989 by 54 FR 8624.)

Section 2520.103-7 special accounting rules for plans filing the initial (1975) annual report.

(a) General.

(1) The administrator of an employee benefit plan which meets the requirements described in paragraph(b)(1) and elects to file an annual report containing the items prescribed in Section 2520.103-1(b) or Section 2520.103-2(b) is not required to comply with the accounting requirements described in paragraph (c)(1) of this Section.

(2) Under the authority of sections 110 and 104(a)(3) of the Act, the administrator of any employee benefit plan which meets the requirements described in paragraph (b)(2) is not required to comply with the accounting requirements described in paragraph (c)(2) of this Section.

(b) Application. with respect to the annual report described in Section 2520.103-1 or Section 2520.103-2, filed in accordance with Section 2520.104a-5 or Section 2520.104a-6 for the plan year beginning in 1975,

(1) The administrator of a plan which covers 100 or more participants as of the beginning of the plan year or the trust or other entity which files an annual report in accordance with Section 2520.104-43 is not required to comply with the accounting requirements described in paragraph (c)(1) of this Section; and

(2) The administrator of a plan which covers fewer than 100 participants as of

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the beginning of the plan year is not required to comply with the accounting requirements described in paragraph (c)(2) of this Section.

(c) Excepted requirements.

(1) In the case of a plan which covers 100 or more participants as of the beginning of the plan year,

(i) To display at current value the statement of the assets and liabilities of the plan, as of the end of the previous plan year;

(ii) To engage an independent qualified public accountant to conduct an examination of the plan's financial statements for the plan year immediately preceding the plan year or trust year covered by the initial annual report, and

(iii) To include within the initial annual report the opinion of an independent qualified public accountant as to whether the financial statements for the close of the initial plan year are presented on a basis consistent with that of the preceding year.

(2) In the case of a plan which covers fewer than 100 participants at the beginning of the plan year, to display at current value the statement of the assets and liabilities of the plan displayed in Item 13 of the 1975 Form 5500-C or Item 12 of the 1975 Form 5500-K as of the end of the previous plan year or as of the beginning of the plan year subject to the initial annual report. (Added March 9, 1978, by 43 F.R. 10130.)

Section 2520.103-8 Limitation on scope of accountant's examination. -

(a) General. Under the authority of Section 103(a)(3)(C) of the Act, the examination and report of an independent qualified public accountant need not extend to any statement or information prepared and certified by a bank or similar institution or insurance carrier. A plan, trust or other entity which meets the requirements of paragraph (b) of this Section is not required to have covered by the accountant's examination or report any of the information described in paragraph (c) of this Section.

(b) Application. This Section applies to any plan, trust or other entity some or all of the assets of which are held by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency.

(c) Excluded information. Any statements or information certified to by a bank or similar institution or insurance carrier described in paragraph (b) of this Section, provided that the statements or information regarding assets so held are prepared and certified to by the bank or insurance carrier in accordance with Section 2520.103-5. (Added March 9, 1978 by 43 FR 10130.)

Section 2520.103-9 Direct filing for bank or insurance carrier trusts and accounts.

(a) General. Under the authority of Section 103(b)(4) of the Act, the Secretary may relieve any employee benefit plan whose assets are held in whole or in part in a common or collective trust or a pooled separate account described in Section

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103(b)(3)(G) of the Act and Sections 2520.103-3 and 2520.1034 from including in the annual report the statement of assets and liabilities of the common or collective trust or pooled separate account if the bank or insurance carrier which maintains such trust or account files such statement of assets and liabilities directly with the Secretary. An employee benefit plan which meets the requirements of paragraph (b)(1) of this Section is relieved from including a statement of assets and liabilities of the common or collective trust or pooled separate account, provided that the bank or insurance carrier which holds the plan's assets meets the requirements of paragraph (b)(3) of this Section. (Corrected April 4, 1978, by 43 FR 14009 and amended July 29, 1980 by 45 FR 51446.)

(b) Application. A plan required to include a statement of assets and liabilities of a common or collective trust or pooled separate account in the annual report in accordance with Section 103(b)(3)(G) of the Act and Sections 2520.103-3 and Section 2520.103-4 is relieved from including such statement in the annual report if the plan administrator files with the annual report the information described in paragraph (b)(1) and provides the bank or insurance carrier the information described in paragraph (b)(2) and the bank or insurance carrier files the information described in paragraph (b)(3) in the manner described therein.

(1) The plan administrator shall include in the annual report:

(i) A certification that the plan has received from the bank or insurance carrier a copy of the annual statement of assets and liabilities of any common or collective trust or pooled separate account in which any plan assets are held for the fiscal year of such trust or account ending with or within the plan year for which the annual report is made; and

(ii) The Employer Identification Number (EIN) of such common or collective trust or pooled separate account and any additional identification number assigned to the trust or account for purposes of this Section pursuant to paragraph (b)(3)(i)(C) of this Section.

(2) The administrator of a plan, assets of which are held in common or collective trust or pooled separate account, shall provide the bank or insurance carrier which maintains the common or collective trust or pooled separate account with the plan number as indicated on the Annual Return/Report Form and the name and EIN of the plan sponsor. Such information shall be provided on or before the end of the plan year.

(3) The bank or insurance carrier which maintains the common or collective trust or pooled separate account in which assets of the plan are held

(i) shall file the following information with the Secretary:

(A) The annual statement of the assets and liabilities of the common or collective trust or pooled separate account in which assets of the plan are held for the fiscal year of such trust or account ending with or within the plan year for which the annual report is made.

(B) A list of all plans, assets of which are held in the common or collective trust or pooled separate account identified by the plan number as on the Annual

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Return/Report Form, name and EIN of the plan sponsor, and

(C) The EIN of the common or collective trust or pooled separate account; if the same EIN designates more than one trust or account, the bank or insurance carrier shall sequentially number the trusts or accounts for purposes of this Section and report the sequential numbers together with the EIN; and

(ii) shall furnish the following items to the plan administrator:

(A) The annual statement of assets and liabilities of the common or collective trust or pooled separate account in which the plan is a participant for the fiscal year of such trust or account ending with or within the plan year for which the annual report is made (See Section 2520.103-5);

(B) The EIN of the common or collective trust or pooled separate account and any other identification number assigned to the trust or account for purposes of this Section; and

(C) A certification that a copy of the annual statement of assets and liabilities of the trust or account for the fiscal year of such trust or account ending with or within the plan year for which the annual report is made has been filed with the Secretary on or before the date upon which the annual report of the plan is required to be filed in accordance with Section 2520.104a-5 or Section 2520.104a-6.

(c) Filing address. The bank or insurance carrier shall file the information required by paragraph (b)(3)(i) of this Section in accordance with the "where to file" instructions of the Return/ Report Form. (Added March 9, 1978, by 43 FR 10130; corrected April 4, 1978, by 43 FR 14009; amended July 29, 1980 by 45 FR 51446.)

Section 2520.103-10 Annual Report Financial Schedules. -

(a) General. The administrator of a plan filing an annual report pursuant to 29 CFR 2520.103-1(a)(2) or the report for a group insurance arrangement pursuant to 29 CFR 2520.103-2, shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan (with 100 or more participants)", include as part of the annual report the separate financial schedules described in paragraph (b) of this Section.

(b) Schedules.

(1) Assets held for investment. A schedule of all assets held for investment purposes at the end of the plan year (see 29 CFR 2520.103-11).

(2) Assets acquired and disposed (of) within the plan year. A schedule of all assets acquired and disposed of within the plan year (see 29 CFR 2520.103-11).

(3) Party in interest transactions. (i) Except as provided in paragraph (b)(3)(ii) of this section, a schedule of each transaction involving a person known

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to be a party in interest.

(ii) Do not include

(A) A transaction to which a statutory exemption under part 4 of Title I applies;

(B) A transaction to which an administrative exemption under Section 408(a) of the Act applies; or

(C) A transaction to which the exemptions of Section 4975(c) or 4975(d) of the Internal Revenue Code of 1954, as amended, apply).

(4) Obligations in default. A schedule of all loans or fixed income obligations which were in default as of the end of the plan year or were classified during the year as uncollectible.

(5) Leases in default. A schedule of all leases which were in default or were classified during the year as uncollectible.

(6) Reportable transactions. A schedule of all reportable transactions as defined in Section 2520.103. (Amended on March 1, 1989 by 54 FR 8624.)

Section 2520.103-11 Assets held for investment purposes. -

(a) General. For purposes of preparing the schedule of assets held for investment purposes required by Section 103(b)(3)(C) of the Act and described in Section 2520.103-10(b)(1) and (2), assets held for investment purposes include those assets described in paragraph (b) of this Section.

(b) Definitions.

(1) Assets held for investment purposes shall include:

(i) Any investment asset held by the plan on the last day of the plan year;  
and

(ii) Any investment asset which was purchased at any time during the plan year and was sold at any time before the last day of the plan year, except as provided by paragraphs (b)(2) and (b)(3) of this Section.

(2) Assets held for investment purposes shall not include any investment which was not held by the plan on the last day of the plan year for which the annual

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report is filed if that investment falls within any of the following categories:

- (i) Debt obligations of the United States or any agency of the United States;
  - (ii) Interests issued by a company registered under the Investment Company Act of 1940;
  - (iii) Bank certificates of deposit with a maturity of not more than one year;
  - (iv) Commercial paper with a maturity of not more than nine months if it is ranked in the highest rating category by at least two nationally recognized statistical rating services and is issued by a company required to file reports with the Securities and Exchange Commission under Section 13 of the Securities Exchange Act of 1934;
  - (v) Participations in a bank common or collective trust;
  - (vi) Participations in an insurance company pooled separate account;
  - (vii) Securities purchased from a person registered as a broker-dealer under the Securities Exchange Act of 1934 and listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or quoted on NASDAQ;
- (3) Assets held for investment purposes shall not include any investment which was not held by the plan on the last day of the plan year for which the annual report is filed if that investment is reported on the annual report of that same plan in any of the following:
- (i) The schedule of each transaction involving a person known to be a party in interest required by Section 103(b)(3)(D) of the Act and Section 2520.103-10(b)(3);
  - (ii) The schedule of loans or fixed income obligations in default required by Section 103(b)(3)(E) of the Act and Section 2520.103-10(b)(4);
  - (iii) The schedule of leases in default or classified as uncollectible required by Section 103(b)(3)(F) of the Act and Section 2520.103-10(b)(5);

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(iv) The schedule of reportable transactions required by Section 103(b)(3)(H) of the Act and Section 2520.103-10(b)(6).

(c) Examples.

(1) On February 1, 1977, plan N purchases an interest in registered investment company F (fund F). Fund F is not a party in interest with respect to plan N. On November 1, 1977, plan N sells this interest in fund F and purchases 1,000 shares of stock S, which the plan holds for the rest of the plan year. Plan N must include in its schedule of assets held for investment purposes the 1,000 shares of stock S under paragraph (b)(1) of this section, but need not include the interest in fund F because of Paragraph (b)(2)(ii) of this section.

(2) On February 1, 1977, plan N purchases a parcel of real estate from Mr. M, who is not a party in interest with respect to plan N. On November 1, 1977, plan N sells the parcel of real estate for cash to Mr. X, who is not a party in interest with respect to plan N. Plan N uses the cash from this transaction to purchase a 1-year certificate of deposit in bank B, which it holds until maturity in 1978. Plan N must include in its schedule of assets held for investment purposes the 1-year certificate of deposit in bank B under paragraph (b)(1)(i) of this section, and must also include the parcel of real estate under paragraph (b)(1)(ii) of this section.

Section 2520.103-12 Limited exemption and alternative method of compliance for annual reporting of investments in certain entities.

(a) This section prescribes an exemption from and alternative method of compliance with the annual reporting requirements of Part I of Title I of ERISA for employee benefit plans whose assets are invested in certain entities described in paragraph (c). A plan utilizing this method of reporting shall include as part of its annual report the current value of its investment or units of participation in the entity in the manner prescribed by the Return/Report Form and the instructions thereto. The plan is not required to include in its annual report any information regarding the underlying assets or individual transactions of the entity, provided the information described in paragraph (b) regarding the entity is reported directly to the Department on behalf of the plan administrator no later than the date on which the plan's annual report is due. The information described in paragraph (b), however, shall be considered as part of the annual report for purposes of the requirements of Section 104(a)(1)(A) of the Act and Section Section 2520.104a-5 and 2520.104a-6.

(b) The following information regarding the entity must be reported for the fiscal year of the entity ending with or within the plan year for which the plan's annual report is made:

(1) Name, Address and EIN of the entity;

(2) A list of all plans investing in the entity identified by plan name, plan number, and name and EIN of the plan sponsor as they appear on the annual return/report;

(3) Annual statement of assets and liabilities of the entity;

(4) Statement of income and expenses of the entity;

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(5) Assets held for investment (including acquisitions and dispositions), leases and obligations in default, and compensation paid by the entity for services - in the manner required by the instructions to the Annual Return/Report Form 5500;

(6) Report of an independent qualified public accountant regarding the statements and schedules described in paragraphs (b)(2)-(5) of this section which meets the requirements of section 2520.103-1(b)(5).

(c) This method of reporting is available to any employee benefit plan which has invested in an entity the assets of which are deemed to include plan assets under section 2510.3-101, provided the entity holds the assets of two or more plans which are not members of a "related group" of employee benefit plans as that term is defined in paragraph (e) of this section. The method of reporting is not available for investments in an insurance company pooled separate account or a common or collective trust maintained by a bank, trust company, or similar institution.

(d) The examination and report of an independent qualified public accountant required by section 2520.103-1 for a plan utilizing the method of reporting described in this section need not extend to any information concerning an entity which is reported directly to the Department under paragraph (b) of this section.

(e) A "related group" of employee benefit plans consists of every group of two or more employee benefit plans

(1) Each of which receives 10 percent or more of its aggregate contributions from the same employer or from members of the same controlled group of corporations (as determined under section 1563(a) of the Internal Revenue Code, without regard to section 1563(a)(4) thereof); or

(2) Each of which is either maintained by, or maintained pursuant to a collective bargaining agreement negotiated by, the same employee organization or affiliated employee organizations. For purposes of this paragraph, an "affiliate" of an employee organization means any person controlling, controlled by, or under common control with such organization, and includes any organization chartered by the same parent body, or governed by the same constitution and bylaws, or having the relation of parent and subordinate. (Added by 51 FR 41285 on November 13, 1986)

11114,232 14,234b Reserved. Temporary and proposed Reg. Section Section 2520.104-41 - 2520.104 - 46 2520.104a - 5, 2520.104a, 2520.104b-10 - 2520.104b-12 formerly appeared at the above paragraphs. Sections 2520.104b-10 - 2520.104b-12 are at para. 14,249I - 14,249K. Final regulations for the other sections have been adopted and are at para. 14,247U - 14,247Z, 14,248D, and 14,248E.)

FILING WITH SECRETARY AND FURNISHING INFORMATION TO PARTICIPANTS

Act Section 104.

(a) (1) The administrator of any employee benefit plan subject to this part shall file with the Secretary

(A) the annual report for a plan year within 210 days after the close of such

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year (or within such time as may be required by regulations promulgated by the Secretary in order to reduce duplicative filing);

(B) the plan description within 120 days after such plan becomes subject to this part and an updated plan description, no more frequently than once every 5 years, as the Secretary may require;

(C) a copy of the summary plan description at the time such summary plan description is required to be furnished to participants and beneficiaries pursuant to subsection (b)(1)(B) of this section; and

(D) modifications and changes referred to in section 102(a)(2) within 60 days after such modification or change is adopted or occurs, as the case may be.

The Secretary shall make copies of such plan descriptions, summary plan descriptions, and annual reports available for inspection in the public document room of the Department of Labor. The administrator shall also furnish to the Secretary, upon request, any documents relating to the employee benefit plan, including but not limited to the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated.

(2) (A) with respect to annual reports required to be filed with the Secretary under this part, he may by regulation prescribe simplified annual reports for any pension plan which covers less than 100 participants.

(B) Nothing contained in this paragraph shall preclude the Secretary from requiring any information or data from any such plan to which this part applies where he finds such data or information is necessary to carry out the purposes of this Title nor shall the Secretary be precluded from revoking provisions for simplified reports for any such plan if he finds it necessary to do so in order to carry out the objectives of this Title.

(3) The Secretary may by regulation exempt any welfare benefit plan from all or part of the reporting and disclosure requirements of this Title, or may provide for simplified reporting and disclosure if he finds that such requirements are inappropriate as applied to welfare benefit plans.

(4) The Secretary may reject any filing under this section

(A) if he determines that such filing is incomplete for purposes of this part;  
or

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(B) if he determines that there is any material qualification by an accountant or actuary contained in an opinion submitted pursuant to Section 103(a)(3)(A) or Section 103(a)(4)(B).

(5) If the Secretary rejects a filing of a report under paragraph (4) and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the Secretary makes his determination under paragraph (4) to reject the filing, and if the Secretary deems it in the best interest of the participants, he may take any one or more of the following actions

(A) retain an independent qualified public accountant (as defined in Section 103(a)(3)(D)) on behalf of the participants to perform an audit,

(B) retain an enrolled actuary (as defined in section 103(a)(4)(C) of this Act) on behalf of the plan participants, to prepare an actuarial statement,

(C) bring a civil action for such legal or equitable relief as may be appropriate to enforce the provisions of this part, or

(D) take any other action authorized by this Title.

The administrator shall permit such accountant or actuary to inspect whatever books and records of the plan are necessary for such audit. The plan shall be liable to the Secretary for the expenses for such audit or report, and the Secretary may bring an action against the plan in any court of competent jurisdiction to recover such expenses.

(b) Publication of the summary plan descriptions and annual reports shall be made to participants and beneficiaries of the particular plan as follows:

(1) The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, a copy of the summary, plan description, and all modifications and changes referred to in section 102(a)(1) -

(A) within 90 days after he becomes a participant, or (in the case of a beneficiary) within 90 days after he first receives benefits, or

(B) if later, within 120 days after the plan becomes subject to this part.

The administrator shall furnish to each participant, and each beneficiary receiving benefits under the plan, every fifth year after the plan becomes subject to this

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part an updated summary plan description described in Section 102 which integrates all plan amendments made within such five-year period, except that in a case where no amendments have been made to a plan during such five-year period this sentence shall not apply. Notwithstanding the foregoing, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, the summary plan description described in Section 102 every tenth year after the plan becomes subject to this part. If there is a modification or change described in Section 102(a)(1), a summary description of such modification or change shall be furnished not later than 210 days after the end of the plan year in which the change is adopted to each participant, and to each beneficiary who is receiving benefits under the plan.

(2) The administrator shall make copies of the plan description and the latest annual report and the bargaining agreement, trust agreement, contract, or other instruments under which the plan was established or is operated available for examination by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants (including such places as the Secretary may prescribe by regulations).

(3) Within 210 days after the close of the fiscal year of the plan, the administrator shall furnish to each participant, and to each beneficiary receiving benefits under the plan, a copy of the statements and schedules, for such fiscal year, described in subparagraphs (A) and (B) of Section 103(b)(3) and such other material (including the percentage determined under Section 103(d)(11)) as is necessary to fairly summarize the latest annual report.

(4) The administrator shall, upon written request of any participant or beneficiary, furnish a copy of the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. The administrator may make a reasonable charge to cover the cost of furnishing such complete copies. The Secretary may by regulation prescribe the maximum amount which will constitute a reasonable charge under the preceding sentence.

(c) The Secretary may by regulation require that the administrator of any employee benefit plan furnish to each participant and to each beneficiary receiving benefits under the plan a statement of the rights of participants and beneficiaries under this Title.

(d) Cross Reference. For regulations respecting coordination of reports to the Secretaries of Labor and the Treasury, see Section 3004.

AMENDMENTS

P.L. 101-239, Section 7894(b)(3):  
Amended ERISA Section 104(a)(5)(B) by striking the period and inserting a comma, effective September 2, 1974.

P.L. 101-239, -7894(b)(4):  
Amended ERISA Section 104(b)(1) by striking the comma after "summary" effective September 2, 1974.

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P.L. 10~203, Section 9342(a)(2):

Amended ERISA Section 104(b)(3) by striking out "such other material" and inserting "such other material (including the percentage determined under Section 103(d)(11))" instead, effective December 17, 1987 for reports required to be filed after December 31, 1987.

P.L. 99-272, Section 11016(b)(2):

Amended ERISA Section 104(a)(2)(A) by striking out the second sentence, effective on April 7, 1986.

Prior to amendment, the second sentence read:

In addition, and without limiting the foregoing sentence, the Secretary may waive or modify the requirements of Section 103(d)(6) in such cases or categories of cases as to which he finds that (i) the interests of the plan participants are not harmed thereby and (ii) the expense of compliance with the specific requirements of Section 103(d)(6) is not justified by the needs of the participants, the Pension Benefit Guaranty Corporation, and the Department of Labor for some portion or all of the information otherwise required under Section 103(d)(6).

For the committee report on P.L. 100-203, relating to reporting requirements for under-funded plans, see 14,230.09.

.10 Conference Committee Explanation (P.L. 934D6). Disclosure to participants. Each administrator of an employee benefit plan is to furnish to each participant and to each beneficiary a summary plan description written in a manner calculated to be understood by the average plan participant or beneficiary. The summary is to include important plan provisions, names and addresses of persons responsible for plan investment or management, a description of benefits, the circumstances that may result in disqualification or ineligibility and the procedures to be followed in presenting claims for benefits under the plan.

Summary plan descriptions are to be furnished to participants within the later of 120 days after the plan is established or 90 days after an individual becomes a participant. Updated plan descriptions are also to be provided to participants every five years thereafter where there have been plan amendments in the interim; in any case, a new description is to be provided every ten years. Also, participants are to receive descriptions of material changes in a plan within 210 days after the end of any plan year in which a material change occurs. Also, the annual report and plan documents are to be available for examination by participants or beneficiaries at the principal office of the plan administrator and such other places as is necessary to provide reasonable access to these reports and documents. Thus, if the participants covered under the plan are employed in more than one geographic area, each geographic area is to have available for examination the required documents. Each participant is also to be furnished a copy within 210 days after the close of the plan year of the schedule of plan assets and liabilities and receipts and disbursements as submitted with the annual report, including any other material which is necessary to thoroughly summarize the latest annual report. Upon a written request, a plan administrator is to furnish a participant or beneficiary a complete copy of the comprehensive plan description, the latest annual report and other instruments under which the plan is established and operated. The plan administrator may charge a reasonable amount for fulfilling such a request.

Upon the request of a plan participant or beneficiary, a plan administrator is to furnish on the basis of the latest available information the total benefits accrued and the non-forfeitable pension benefit rights, if any, which have accrued. No more than one request may be made by any participant or beneficiary for this information during any one 12-month period.

A copy of the statement of the deferred vested benefits in the plan for individuals who have terminated employment during a plan year which is furnished to the Social Security Administration also is to be furnished to the individual participant.

### Regulations

Reg. Section 2520.104-3 was adopted by FR Doc. 75-11656 under "Title 29 - Labor;

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Chapter XXV{Office of Employee Benefits Security; Part 2520 - Rules and Regulations for Reporting and Disclosure." The regulation was filed with the Federal Register on April 30, 1975, and published in the Federal Register on May 5, 1975. Reg. Section 2520.104-3 was amended and Reg. Sections 2520.104-2, and 2520.104-20 - 2520.104-25 were adopted by FR Doc. 75-21470, effective August 15, 1975, and published in the Federal Register on August 15, 1975. Reg. Sections 2520.104-1, 2520.104-5, 2520.104-6, 2520.104a-1, 2520.104a-2, 2520.104a-4, 2520.104b-1, 2520.104b-5 and 2520.104b-30 were adopted by FR Doc. 76-11859 (41 FR 16957) filed with the Federal Register on April 22, 1976, published in the Federal Register of April 23, 1976, and effective April 23, 1976. Reg. Sections 2520.104-4, 2520.104-26, 2520.104-27, 2520.104a-3, 2520.104b-2, 2520.104b-3, and 2520.104b-4 were adopted by FR Doc. 77-7637, filed with the Federal Register on March 11, 1977 and published in the Federal Register and effective on March 15, 1977 (42 FR 14266). Reg. Section 2520.104-26, 2520.104-27, 2520.104b(2)(d)(2), 2520.104b-2(e)(2), and 2520.104b-2(f) are interim as well as proposed regulations. Reg. Section 2520.104-5 and 2520.104-6 were amended by FR Doc. 77-7464 (42 FR 14280), published in the Federal Register of March 15, 1977, and effective March 15, 1977. The following sections or portions of sections, previously published as interim rules on March 15, 1977, were made final by FR Doc. 20810 (42 FR 37178), effective July 19, 1977: Section 2520.104-26, 2520.104-27, and 2520.104b-2. At the same time, the following sections were adopted as interim rules: Section 2520.104-5, 2520.104-6, 2520.104-28, 2520.104a-5, 2520.104b-2(a)(3), and 2520.104b-4. Reg. Section 2520.104-41 - 2520.104-46, 2520.104a-5, and 2520.104a-6, were adopted by 41 FR 10130, effective generally for plan years beginning 1977 and thereafter. Reg. Section 2520.104-20, 2520.104-21, and 2520.104a-4 were amended at the same time. Reg. Section 2520.104b-10 was adopted by 44 FR 19400, published on April 3, 1979. The following interim rules were made final by FR Doc. 80-6528 (45 FR 14029), effective April 3, 1980; Reg. Section 2520.104-5, 2520.104-6, 2520.104-28, 2520.104a-7, 2520.104b-2(a)(3), and 2520.104b-4. Reg. Section 2520.104-48 was adopted by 45 FR 24866 and published on April 11, 1980. Reg. Section 2520.104-49 was adopted by 46 FR 1261 and published in the Federal Register on January 6, 1981. Reg. Section 2520.104-50 was adopted by 46 FR 1265 and published in the Federal Register on January 6, 1981. Reg. Section 2520.104-23(b)(2)(ii) and 2520.104-44(b)(1)(ii) were amended by 46 FR 5882 and published in the Federal Register on January 21, 1981.

### Subpart D Provisions Applicable to Both Reporting and Disclosure Requirements

Section 2520.104-1 General. The administrator of an employee benefit plan covered by Part I of Title I of the Act must file reports and additional information with the Secretary of Labor, and disclose reports, statements, and documents to plan participants and to beneficiaries receiving benefits from the plan. The regulations contained in this Subpart are applicable to both the reporting and disclosure requirements of Part I of Title I of the Act. Regulations concerning only a plan administrator's duty of reporting to the Secretary of Labor are set forth in Subpart E of this part, and those applicable only to the duty of disclosure to participants and beneficiaries are set forth in Subpart F of this part. (Added by 41 FR 16957, effective April 23, 1976.)

Section 2520.104-2 Postponing effective date of annual reporting requirements and extending WPPDA reporting requirements. -

(a) Postponing reports under the Act. The January 1, 1975, effective date for the annual financial reporting and related disclosure requirements of Section 103 of the Act is postponed for any employee benefit plan having a plan year other than a calendar year. These requirements shall become effective as to such plans on the first day of the first plan year beginning after January 1, 1975. Specifically, the administrator of a non-calendar year plan (1) is not required to file an annual financial report with the Secretary under sections 103(a)(1)(A) and 104(a)(1)(A) of the Act until the required time (210 days or such other time as the Secretary of Labor sets by regulation) after the end of the first plan year which begins after January 1, 1975, and (2) is not required to furnish participants covered under the plan and beneficiaries receiving benefits under the plan with statements of the plan's assets, liabilities, receipts, disbursements, and a summary of the latest

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annual report, as required by sections 103(a)(1)(A) and 104(b)(3) of the Act, until the required time after the end of the first year which begins after January 1, 1975. The requirement of Section 104(b)(2) of the Act to make copies of the latest annual report available for inspection, and the requirement of Section 104(b)(4) of the Act to furnish, upon written request of a participant or beneficiary, a copy of the latest annual report, do not take effect until the required time after the end of the first plan year which begins after January 1, 1975.

Example. A plan with a plan year beginning on April 1, 1975, files an annual report with the Secretary within the required time after March 31, 1976. The plan also furnishes participants covered under the plan and beneficiaries receiving benefits under the plan with statements of the plan's assets and liabilities and receipts and disbursements, and a summary of the latest annual report, by the same date. The following disclosure requirements are also complied with by the same date: A copy of the annual report is made available for inspection by any plan participant or beneficiary in the principal office of the administrator and in such other places as may be necessary to make available all pertinent information to all participants; and the plan administrator supplies a copy of the annual report to any participant or beneficiary who requests it in writing.

(b) Extending WPPDA reporting. The repeal of the annual reporting requirements of Section 7 and the requirements for disclosure to participants and beneficiaries relating to annual reports of Section 8(a)(2) of the Welfare and Pension Plans Disclosure Act (29 U.S.C. 306) are postponed from January 1, 1975 for any employee benefit plan having a plan year other than a calendar year. For non-calendar year plans subject to the WPPDA, the reporting and disclosure provisions of the WPPDA shall remain in force and effect through the last day of any plan year beginning before January 1, 1975, and ending after December 31, 1974.

(c) Effect on other provisions. This postponement does not delay the effective date of any other provisions of Part I of Title I of the Act.

Section 2520.104-3 Deferral of certain initial reporting and disclosure requirements. -

(a) Under the authority of Section 104(a)(3) of the Act, certain reporting and disclosure requirements of employee welfare benefit plans are deferred. This deferral is set forth in paragraph (c) of this Section and applies to welfare plans subject to Part I of Title I of the Act on or before January 31, 1976. Welfare plans which become subject to Part I on or after February 1, 1976 shall meet the general reporting and disclosure provisions set forth in that part and regulations issued thereunder.

(b) Under the authority of Section 110 of the Act, an alternative method of compliance is provided for employee pension benefit plans subject to Part I of Title I of the Act on or before January 31, 1976. This alternative, set forth in paragraph (c) of this Section, permits an administrator of a pension plan to defer compliance with certain reporting and disclosure requirements. Pension plans which become subject to Part I of Title I of the Act on or after February 1, 1976 shall meet the general reporting and disclosure provisions set forth in that part and regulations issued thereunder.

(c) The administrator of a welfare plan described in paragraph (a) of this Section or of a pension plan using the alternative specified in paragraph (b) of this Section:

(1) Shall file a short form plan description consisting of the first two pages of Department of Labor Form EBS-I (not including schedules A, B and C) and the signature page (item 38 only), on or before the later of

(i) August 31, 1975, or

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(ii) The 120th day after the plan becomes subject to Part I;

(2) May defer compliance with the following provisions of Part I of Title I of the Act until May 30, 1976

(i) Subsection (a)(1)(C) and (b)(1) of section 104 of the Act, to the extent that they require plan administrators to file with the Secretary, and furnish to plan participants and beneficiaries copies of a summary plan description,

(ii) Section 104(a)(1)(B) of the Act, which requires plan administrators to file a plan description with the Secretary.

(iii) Section 104(b)(2) of the Act to the extent that it requires plan administrators to make copies of the plan description available for examination by any plan participant and beneficiary of certain places, and

(3) Shall not be required to comply with the provisions of sections 104(a)(1)(D) and 104(b)(1) of the Act, to the extent that they require plan administrators to file with the Secretary of Labor, and to furnish to plan participants and beneficiaries summaries of, material modifications to the plan and changes in information required to be included in the plan description or summary plan description, as the case may be, which

(i) Are adopted or occurred prior to May 30, 1976,

(ii) Are effective on May 30, 1976, and

(iii) Are incorporated in the initial plan description and summary plan description. (Amended August 15, 1975, by F.R. Doc. 75-21470.)

Section 2520.104-4 Alternative method of compliance for certain successor pension plans. -

(a) General. Under the authority of Section 110 of the Act, this Section sets forth an alternative method of compliance for certain successor pension plans in which some participants and beneficiaries not only have their rights set out in the plan, but also retain eligibility for certain benefits under the terms of a former plan which has been merged into the successor. This Section is applicable only to plan mergers which occur after the issuance by the successor plan of the initial summary plan description under the Act. Under the alternative method, the plan administrator of the successor plan is not required to describe relevant provisions

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of merged plans in summary plan descriptions of the successor plan furnished after the merger to that class of participants and beneficiaries still affected by the terms of the merged plans. Also, the plan administrator of the successor plan is not required to file with the Secretary of Labor a copy of the summary plan description of any merged plan. (Amended by 42 F.R. 37178, effective July 19, 1977.)

(b) Scope and application. This alternative method of compliance is available only if:

(1) The plan administrator of the successor plan furnishes to the participants covered under the merged plan and beneficiaries receiving pension benefits under the merged plan within 90 days after the effective date of the merger

(i) A copy of the most recent summary plan description of the successor plan;

(ii) A copy of any summaries of material modifications to the successor plan not incorporated in the most recent summary plan description; and

(iii) A separate statement containing a brief description of the merger; a description of the provisions of, and benefits provided by, the merged and successor plans which are applicable to the participants and beneficiaries of the merged plan; and a notice that copies of the merged and successor plan documents (including the portions of any corporate merger documents which describe or control the plan merger), are available for inspection and that copies may be obtained upon written request for a duplication charge (pursuant to Section 2520.104b-30); and

(iv) Section 104(b)(4) of the Act to the extent that it requires plan administrators to furnish a copy of the latest summary plan description and plan description to any participants or beneficiary upon written request; and

(2) After the merger, the plan administrator, in all subsequent summary plan descriptions furnished pursuant to Section 2520.104b-2(a)

(i) Clearly and conspicuously identifies the class of participants and beneficiaries affected by the provisions of the merged plan, and

(ii) States that the documents described in paragraph (b)(1) of this Section are available for inspection and that copies may be obtained upon written request for a duplication charge (pursuant to Section 2520.104(b)-30). (Added by 42 F.R. 14266, effective March 15, 1977, and amended by 42 FR 37178, effective July 19, 1977.)

Section 2520.104-5 Deferral of certain reporting and disclosure requirements relating to the summary plan description for welfare plans.

(a) General Rule. Under the authority of Section 104(a)(3) of the Act, employee welfare benefit plans described in and meeting the conditions of paragraph (b) may defer certain reporting and disclosure requirements that apply on and after July 15, 1977. These requirements may be deferred until dates that are no earlier than

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November 16, 1977, as provided in paragraph (c). The requirements that may be deferred include filing a copy of a summary plan description with the Secretary, furnishing a copy of a summary plan description to participants of a plan, filing material modifications to the plan and changes in the information required to be included in the summary plan description with the Secretary, furnishing a summary description of such modifications or changes to participants of a plan, and furnishing a copy of the latest summary plan description to participants and beneficiaries upon written request.

(b) Application.

(1) in the case of a welfare plan which became subject to the provisions of Part 1, Title I of the Act on or before March 2, 1976, the plan administrator may defer until the time specified in paragraph (c) compliance with the requirements set forth in paragraph (a), if the administrator:

(i) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 on or before May 30, 1976 to each participant covered under the plan as of March 2, 1976,

(ii) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 to each person who became a participant covered under the plan after March 2, 1976 and before December 2, 1976, within 90 days after that person became a participant covered under the plan and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary to whom no copy of the Notice had been previously furnished.

(2) In the case of a welfare plan which became subject to the provisions of Part 1, Title I of the Act after March 2, 1976 but before December 2, 1976, the plan administrator may defer until the time specified in paragraph (c) compliance with the requirements set forth in paragraph (a) if the administrator:

(i) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 within 90 days after the date the plan became subject to the provision of Part 1, Title I, to each person who was a participant covered under the plan on the date the plan became subject to the provisions of Part 1, Title I;

(ii) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 to each person who became a participant covered under the plan after the date on which the plan became subject to the provisions of Part 1, Title I and before December 2, 1976, within 90 days after that person became a participant covered under the plan; and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary to whom no copy of the Notice had been previously furnished.

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(3) In the case of a welfare plan which became subject to the provisions of Part 1, Title I of the Act on or after December 2, 1976, but before the date of publication of these regulations, the administrator may defer compliance with the requirements set forth in paragraph (a) until the time set in paragraph (c).

(c) The administrator of a welfare plan described in paragraph (b) who elected to defer compliance with the requirements described in paragraph (a) shall comply with such requirements by November 16, 1977. (Added by 41 FR 16967, effective April 23, 1976; amended by 41 FR 55510, filed with the Federal Register on December 20, 1977, by 42 FR 14280, effective March 15, 1977, and by 42 FR 37178, effective July 19, 1977; finalized by 45 FR 14029, effective April 3, 1980.

Section 2520.104~ Deferral of certain reporting and disclosure requirements relating to the summary plan description for pension plans.

(a) General Rule. Under the authority of Section 110 of the Act, an alternative method of compliance which defers certain reporting and disclosure requirements that apply on and after May 30, 1976 is provided for employee pension benefit plans described in and meeting the conditions of paragraph (b). The alternative method of compliance permits pension plans to defer these requirements until the times set forth in paragraphs (c) or (d). The requirements which may be deferred include filing a copy of the summary plan description with the Secretary, furnishing a copy of the summary plan description to participants and beneficiaries of a plan, filing material modifications and changes in the information required to be included in the summary plan description with the Secretary, furnishing a summary description of such modifications or changes to participants and beneficiaries of a plan, and furnishing a copy of the latest summary plan description upon written request.

(b) Application.

(1) In the case of a pension plan which became subject to the provisions of Part 1, Title I of the Act on or before March 2, 1976, the plan administrator may defer until the times specified in paragraph (c)(1) compliance with the requirements set forth in paragraph (a), if the administrator:

(i) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 on or before May 30, 1976 to each participant covered under the plan and beneficiary receiving benefits as of March 2, 1976.

(ii) Furnished an ERISA Notice to each person who became a participant covered under the plan or a beneficiary receiving benefits after March 2, 1976 but more than 120 days before the date prescribed in paragraph (c)(1), within 90 days after that person became a participant covered under the plan or beneficiary receiving benefits, and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary receiving benefits to whom no copy of the Notice had been previously furnished.

(2) In the case of a pension plan which became subject to the provisions of Part I, Title I of the Act after March 2, 1976 but before December 2, 1976, the plan administrator may defer until the times specified by paragraph (c)(1) compliance with the requirements set forth in paragraph (a) if the administrator:

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(i) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 within 90 days after the date the plan became subject to the provisions of Part 1, Title I to each person who was a participant covered under the plan or beneficiary receiving benefits on the date the plan became subject to the provisions of Part 1, Title I;

(ii) Furnished an ERISA Notice which met the requirements of Section 2520.104b-5 to each person who became a participant covered under the plan or a beneficiary receiving benefits after the date on which the plan became subject to the provisions of Part I Title I but more than 120 days before the date prescribed in paragraph (c)(1), within 90 days after that person became a participant covered under the plan or a beneficiary receiving benefits; and

(iii) Furnished a copy of the ERISA Notice, without charge, upon request to any participant covered under the plan or beneficiary receiving benefits to whom no copy of the Notice had been previously furnished.

(3) In the case of a pension plan which became subject to the provisions of Part I, Title I of the Act on or after December 2, 1976 but before March 17, 1977, the administrator may defer compliance with the requirements set forth in paragraph (a) until the times specified in paragraph (c)(1).

(4) In the case of a pension plan, other than a pension plan described in subparagraph (5), which became subject to the provisions of Part 1, Title I of the Act on or after March 17, 1977 and before July 19, 1977, the administrator may defer compliance with the requirements set forth in paragraph (a) until the time specified in paragraph (c)(2).

(5) In the case of a master, prototype, or practitioner pattern plan which became subject to the provisions of Part I, Title I of the Act on or after March 17, 1977, the administrator may defer compliance with the requirements set forth in paragraphs (a) until the times specified in paragraph (d).

(c) (1) The administrator of a pension plan described in paragraph (b)(1), (b)(2), or (b)(3) who elected to defer compliance with the requirements described in paragraph (a)

(A) And who files a request for a determination letter within the period prescribed in Section 401(b) of the Internal Revenue Code of 1954 and the regulations issued pursuant thereto, shall have complied with the requirements described in paragraph (a) by the later of November 16, 1977 or 90 days after the date on which notice of the final determination with respect to the request for a determination letter is issued by the Internal Revenue Service, the request is withdrawn or the request is otherwise finally disposed of.

(B) For the purpose of computing the periods of time described in subparagraph (A) above, a notice of determination, opinion letter or notification letter from the

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Internal Revenue Service will be deemed to be issued on the later of the date of such document or the date of postmark thereon. The date of withdrawal of a request for a determination letter, opinion letter or notification letter will be deemed to be the later of the date on the document withdrawing the request or the postmark thereon. The date of "other disposition" will be the later of the date on the document notifying of such other disposition or the postmark on such document.

(C) And who does not file a request for a determination letter within the period prescribed in Section 401(b) of the Internal Revenue Code and the regulations issued pursuant thereto, shall have complied with the requirements described in paragraph (a) by the later of November 16, 1977 or the close of the period prescribed in Section 401(b) of the Internal Revenue Code of 1954 and the regulations issued pursuant thereto.

(2) The administrator of a pension plan described in paragraph (b)(4) who defers compliance with the requirements described in paragraph (a) shall have complied with such requirements by November 16, 1977.

(d) Special rule for plans adopting master, prototype or practitioner pattern plans after March 17, 1977 The administrator of a pension plan which adopts a master, prototype, or practitioner pattern plan on or after March 17, 1977 may defer compliance with the statutory requirements described in paragraph (a) until the later of

(1) The end of the applicable remedial amendment period described in 26 CFR Section 1.401b-1(d)(1) or (2) of regulations issued by the Internal Revenue Service under Section 401(b) of the Internal Revenue Code of 1954, or

(2) November 16, 1977. (Added by 41 FR 16957, effective April 23, 1976; amended by 42 FR 14280, effective March 15, 1977, and by 42 FR 3178, effective July 19, 1977; amended and finalized by 45 FR 14029, effective April 3, 1980.)

Section 2520.104-20 Limited exemption for certain small welfare plans. -

(a) Scope. Under the authority of Section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this Section is exempted from certain reporting and disclosure plan provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary any of the following documents: Plan description, copy of the summary plan description, description of a material modification in the terms of a plan or change in the information required to be included in the plan description, annual report, and terminal report. In addition, the administrator of a plan exempted under this Section

(1) Is not required to furnish participants covered under the plan and beneficiaries receiving benefits under the plan with statements of the plan's assets and liabilities and receipts and disbursements and a summary of the annual report required by Section 104(b)(3) of the Act;

(2) Is not required to furnish upon written request of any participant or beneficiary a copy of the plan description, annual report, and any terminal report,

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as required by Section 104(b)(4) of the Act; and

(3) Is not required to make copies of the plan description and annual report available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by Section 104(b)(2) of the Act.

(b) Application. This exemption applies only to welfare benefit plans  
(1) which have fewer than 100 participants at the beginning of the plan year;

(2) (i) For which benefits are paid as needed solely from the general assets of the employer or employee organization maintaining the plan, or

(ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State or through a qualified health maintenance organization as defined in Section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. Section 300e-9(d), the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, Provided, that contributions by participants are forwarded by the employer or employee organization within three months of receipt, or (Amended by 46 FR 5882, originally scheduled to be effective February 20, 1981. However, the effective date was delayed under the President's regulation freeze until March 30, 1981 (46 FR 11253).)

(iii) Both; and

(3) for which. in the case of an insured

(i) Refunds, to which contributing participants are entitled, are returned to them within three months of receipt by the employer or employee organization, and

(ii) Contributing participants are informed upon entry into the plan of the provisions of the plan concerning the allocation of refunds.

(c) Limitations. This exemption does not exempt the administrator of an employee benefit plan from any other requirement of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (Section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (Section 104(a)(1)), and which authorize the secretary of Labor to collect information and data from employee

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benefit plans for research and analysis (Section 513).

(d) Examples.

(1) A welfare plan has 75 participants at the beginning of the plan year and 105 participants at the end of the plan year. Plan benefits are fully insured and premiums are paid directly to the insurance company by the employer pursuant to an insurance contract purchased with premium payments derived half from the general assets of the employer and half from employee contributions (which the employer forwards within three months of receipt). Refunds to the plan are paid to participating employees within three months of receipt as provided in the plan and as described to each participant upon entering the plan. The plan appoints the employer as its plan administrator. The employer, as plan administrator, provides summary plan descriptions to participants and beneficiaries. He also makes copies of certain plan documents available at the plan's principal office and such other places as necessary to give participants reasonable access to them. The exemption provided by Section 2520.104-20 applies even though the plan has more than 100 participants by the end of the plan year, because it had fewer than 100 participants at the beginning of the plan year and otherwise satisfied the conditions of the exemption.

(2) A welfare plan is established and maintained in the same way as the plan described in example (1), except that a trade association which sponsors the plan is the holder of the insurance contract. Since the plan still sends the premium payments directly to the insurance company, the exemption applies, as in example (1). (Amended March 9, 1978, by 43 F.R. 10130.)

Section 2520.104-21 Limited exemption for certain group insurance arrangements. -

(a) Scope. Under the authority of Section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this Section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary any of the following documents: Plan description, copy of the summary plan description, description of a material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this Section:

(1) Is not required to furnish upon written request of any participant or beneficiary a copy of the plan description and any terminal report, as required by Section 104(b)(4) of the Act;

(2) Is not required to make copies of the plan description available for examination by any participant or beneficiary in the principal office of the administrator and such other places as may be necessary, as required by Section 104(b)(2) of the Act.

(b) Application. This exemption applies only to welfare plans, each of which has fewer than 100 participants at the beginning of the plan year and which are part of a group insurance arrangement if such arrangement:

(1) Provides benefits to the employees of two or more unaffiliated employers, but not in connection with a multi-employer plan as defined in Section 3(37) of the Act and any regulations prescribed under the Act concerning Section 3(37);

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(2) Fully insures one or more welfare plans of each participating employer through insurance contracts purchased solely by the employers or purchased partly by the employers and partly by their participating employees, with all benefit payments made by the insurance company: Provided, that

(i) Contributions by participating employees are forwarded by the employers within three months of receipt,

(ii) Refunds, to which contributing participants are entitled, are returned to them within three months of receipt, and

(iii) Contributing participants are informed upon entry into the plan of the provisions of the plan concerning the allocation of refunds; and

(3) Uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to the insurance company.

(c) Limitations. This exemption does not exempt the administrator of an employee benefit plan from any other requirement of Title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (Section 104(b)(1)), file an annual report with the Secretary of Labor (Section 104(a)(1)(A)) and furnish certain documents to the Secretary of Labor upon request (Section 104(a)(1)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (Section 513).

(d) Examples.

(1) A welfare plan has 25 participants at the beginning of the plan year. It is part of a group insurance arrangement which provides benefits to employees of two or more unaffiliated employers, but not in connection with a multi-employer plan as defined under the Act. Plan benefits are fully insured pursuant to insurance contracts purchased with premium payments derived half from employee contributions (which the employer forwards within three months of receipt) and half from the general assets of participating employers. Refunds to the plan are paid to participating employees within three months of receipt as provided in the plan and as described to each participant upon entering the plan. A trade association is the holder of the insurance contract and acts as a conduit for payments, receiving premium payments from participating employers and paying the insurance company. The plan appoints the trade association as its plan administrator. The association, as plan administrator, provides summary plan descriptions to participants and beneficiaries, enlisting the help of the participating employer in carrying out this distribution. The plan administrator also makes copies of certain plan documents available to the plan's principal office and such other places as necessary to give participants reasonable access to them. The plan administrator files with the Secretary an annual report covering activities of the plan, as required by the Act and such regulations as the Secretary may issue. The exemption provided by Section 2520, 104-21 applies because the conditions of Section 2520.104-21(c) have been satisfied.

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(2) A welfare plan has 75 participants at the beginning of the plan year. It is part of a group insurance arrangement and its benefits and credits are paid in the same manner as in example (1) of Section 2520.104-21. A trade association acts as a conduit for payments, acting through its agent, an independent insurance brokerage firm, and is the holder of the insurance contract. The man appoints an officer of the participating employer as the plan administrator. The officer, as plan administrator, performs the same reporting and disclosure functions as the administrator in example (1) of section 2520.104-21, enlisting the help of the association in providing summary plan descriptions and necessary information. The exemption provided by Section 2520.104-21 applies.

(3) A welfare plan has 125 participants at the beginning of the plan year. It is part of a group insurance arrangement and its benefits and credits are paid in the same manner as in the previous examples. A trade association acts as a conduit for payments and is the holder of the insurance contract. The plan appoints the association as plan administrator. The association, as plan administrator, performs all the reporting and disclosure requirements of Title I of the Act for the plan. These include filing with the Secretary a plan description, summary plan description, description of any material modifications in the terms of the plan or change in the information required to be included in the plan description, annual report, and certain other documents if required by regulations or request of the Secretary of Labor. The requirements also include disclosure of certain documents to participants and beneficiaries, including among others the summary plan description and summary of the annual report. The plan administrator obtains necessary information not available in its records such as the fact that there are 125 participants from the plan. The exemption provided by Section 2520.104-21 does not apply because the plan had more than 100 participants at the beginning of the plan year although the other conditions of paragraph (c) are satisfied.

(4) A welfare plan has 125 participants. It is part of a group insurance arrangement and its benefits and credits are paid in the same manner as in the previous examples. A trade association acts as a conduit for payments and is the holder of the insurance contract. The plan appoints an officer of the participating employer as plan administrator. The plan administrator performs the same reporting and disclosure functions as the administrator in example (3), enlisting the help of the association in providing summary plan descriptions and necessary information. The exemption provided by Section 2520.104-21 does not apply. (Amended March 9, 1978, by 41 F.R. 10130.)

Section 2520.104-22 Exemption from reporting and disclosure requirements for apprenticeship and training plans.

(a) An employee welfare benefit plan that provides exclusively apprenticeship training benefits or other training benefits or that provides exclusively apprenticeship and training benefits shall not be required to meet any requirement of Part I of the Act, provided that the administrator of such plan: (1) has filed with the Secretary the notice described in paragraph (b) of this Section; (2) takes steps reasonably designed to ensure that the information required to be contained in such notice is disclosed to employees of employers contributing to the plan who may be eligible to enroll in any course of study sponsored or established by the plan; and (3) makes such notice available to such employees upon request.

(b) The notice referred to in paragraph (a) of this Section shall contain accurate information concerning: (1) the name of the plan; (2) the Employer Identification Number (EIN) of the plan sponsor, (3) the name of the plan administrator; (4) the name and location of an office or person from whom an interested individual can obtain: (i) a description of any existing or anticipated future course of study sponsored or established by the plan, including any

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prerequisites for enrolling in such course; and (ii) a description of the procedure by which to enroll in such course. (Amended March 10, 1980, by 45 FR 15527.)

(c) Filing Address. The notice referred to in paragraph (a) of this Section shall be filed with the Secretary of Labor by mailing it to: Apprenticeship and Training Plan Exemption, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. (Amended on March 1, 1989 by 54 FR 8624.)

Section 2520.104-23 Alternative method of compliance for pension plans for certain selected employees.

(a) Purpose and scope.

(1) This Section contains an alternative method of compliance with the reporting and disclosure requirements of Part I of Title I of the Employee Retirement Income Security Act of 1974 for unfunded or insured pension plans maintained by an employer for a select group of management or highly compensated employees, pursuant to the authority of the Secretary of Labor under Section 110 of the Act (88 Stat. 851).

(2) Under Section 110 of the Act, the Secretary is authorized to prescribe an alternative method for satisfying any requirement of Part I of Title I of the Act with respect to any pension plans, or class of pension plans, subject to such requirement.

(b) Filing obligation. Under the authority of Section 110 of the Act, an alternative form of compliance with the reporting and disclosure requirements of Part I of the Act is provided for certain pension plans for a select group of management or highly compensated employees. The administrator of a pension plan described in paragraph (d) shall be deemed to satisfy the reporting and disclosure provisions of Part I of Title I of the Act by

(1) Filing a statement with the Secretary of Labor that includes the name and address of the employer, the employer identification number (EIN) assigned by the Internal Revenue Service, a declaration that the employer maintains a plan or plans primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and a statement of the number of such plans and the number of employees in each, and

(2) Providing plan documents, if any, to the Secretary upon request as required by Section 104(a)(1) of the Act. Only one statement need be filed for each employer maintaining one or more of the plans described in paragraph (d) of this Section. For plans in existence on May 4, 1975, the statement shall be filed on or before August 31, 1975. For a plan to which Part I of Title I of the Act becomes applicable after May 4, 1975, the statement shall be filed within 120 days after the plan becomes subject to Part 1.

(c) Filing Address. Statements may be filed with the Secretary of Labor by mailing them addressed to: Top Hat Plan Exemption, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Division of Reports, Office of Program Services, Pension and Welfare Benefits

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Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. (Amended on March 1, 1989 by 54 FR 8624.)

- (d) Application. The alternative form of compliance described in paragraph (b) of this section is available only to employee pension benefit plans
- (1) which are maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and
  - (2) For which benefits (i) are paid as needed solely from the general assets of the employer, (ii) are provided exclusively through insurance contracts or policies, the premiums for which are paid directly by the employer from its general assets, issued by an insurance company or similar organization which is qualified to do business in any State, or (iii) both.

Section 2520.104-24 Exemption for welfare plans for certain selected employees. -

- (a) Purpose and scope.
- (1) This Section, under the authority of Section 104(a)(3) of the Employee Retirement Income Security Act of 1974, exempts unfunded or insured welfare plans maintained by an employer for the purpose of providing benefits for a select group of management or highly compensated employees from the reporting and disclosure provisions of Part I of Title I of the Act, except for the requirement to provide plan documents to the Secretary of Labor upon request under Section 104(a)(1) of the Act.

(2) Under Section 104(a)(3) of the Act, the Secretary is authorized to exempt by regulation any welfare benefit plan from all or part of the reporting and disclosure requirements of Title I of the Act.

(b) Exemption. Under the authority of Section 104(a)(3) of the Act, each employee welfare benefit plan described in paragraph (c) of this section is exempted from the reporting and disclosure provisions of Part I of Title I of the Act, except for providing plan documents to the Secretary of Labor upon request as required by Section 104(a)(1).

- (c) Application. This exemption is available only to employee welfare benefit plans:
- (1) which are maintained by an employer primarily for the purpose of providing benefits for a select group of management or highly compensated employees, and

(2) For which benefits (i) are paid as needed solely from the general assets of the employer, (ii) are provided exclusively through insurance contracts or policies, the premiums for which are paid directly by the employer from its general assets, issued by an insurance company or similar organization which is qualified to do business in any State, or (iii) both.

Section 2520.104-25 Exemption from reporting and disclosure for day care centers. Under the authority of Section 104(a)(3) of the Act, day care centers are exempted from the reporting and disclosure provisions of Part I of Title I of the Act, except for providing plan documents to the Secretary upon request as required under Section 104(a)(1) of the Act.

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Section 2520.104-26 Limited exemption for certain dues financed welfare plans maintained by employee organizations.

(a) Scope. Under the authority of Section 104(a)(3) of the Act, a welfare benefit plan that meets the requirements of paragraph (b) of this Section is exempted from the provisions of the Act that require (i) filing with the Secretary a plan description and annual report, and (ii) furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirements (i) to furnish a summary plan description to participants and beneficiaries, and (ii) to file a copy of the summary plan description with the Secretary, as follows:

(1) In lieu of filing a plan description and a summary plan description with the Secretary,

(i) filing is made under the Labor-Management Reporting and Disclosure Act (LMROA) and regulations thereunder, of the Report Form LM-I or LM-IA, together with a copy of the employee organization constitution or by-laws in which the plan is described, and

(ii) filing is made of any document furnished to participants and beneficiaries, in accordance with subparagraph (3).

(2) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM-2 or LM-3, pursuant to the LMRDA and regulations thereunder.

(3) (i) The plan meets the requirements for furnishing a summary plan description of Section 2520.104b-2(f), except the requirement of subparagraph (1) of that paragraph to have furnished the summary plan description before the date of publication of these regulations. The employee organization constitution or by-laws may be used as the summary plan description, if they meet the requirements of that paragraph.

(ii) Notwithstanding subparagraph (i), if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits, although such portion of dues or assets may legally be used for general employee organization purposes, or may be subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description provided that:

(A) The supplement required by Section 2520.104b-2(f) contains a clear statement that such portion of dues or assets may legally be used for general employee organization purposes or may be subject to the claims of general creditors of the employee organization, and

(B) The employee organization constitution or by-laws are amended as soon as possible following normal procedures (e.g., at the next regularly scheduled employee

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organization convention, in the case of a constitution or by-laws which provide for amendment in regularly scheduled conventions) to reflect accurately the status of the plan.

(b) Application. This exemption is available only to welfare benefit plans maintained by an employee organization, as that term is defined in Section 3(4) of the Act, paid for out of the employee organization's assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

(c) Limitations. This exemption does not exempt the administrator from any other requirement of Part I of Title I of the Act. (Added by 42 FR 37178, effective July 19, 1977.)

Section 2520.104-27 Alternative method of compliance for certain dues financed pension plans maintained by employee organizations.

(a) Scope. Under the authority of Section 110 of the Act, a pension benefit plan that meets the requirements of paragraph (b) of this Section is exempted from the provisions of the Act that require (i) filing with the Secretary a plan description and annual report, and (ii) furnishing a summary annual report to participants and beneficiaries receiving benefits. Such plans may use a simplified method of reporting and disclosure to comply with the requirements (i) to furnish a summary plan description to participants and beneficiaries receiving benefits, and (ii) to file a copy of the summary plan description with the Secretary, as follows:

(1) In lieu of filing a plan description and a summary plan description with the Secretary,

(i) filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, of the Report Form LM-I on LM-IA, together with a copy of the employee organization constitution or by-laws in which the plan is described, and

(ii) filing is made of any document furnished to participants and beneficiaries, in accordance with subparagraph (3).

(2) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM-2 or LM-3, pursuant to the LMRDA and regulations thereunder.

(3) (i) The plan meets the requirements for furnishing the summary plan description of Section 2520.104b-2(f) except the requirement of subparagraph (1) of that paragraph to have furnished the summary plan description before the date of publication of these regulations. The employee organization constitution or by-laws may be used as the summary plan description, if they meet the requirements of that paragraph.

(ii) Notwithstanding subparagraph (i), if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits,

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although such portion of dues or assets may legally be used for general employee organization purposes, or may be subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description provided that:

(A) The supplement required by Section 2520.104b-2(f) contains a clear statement that such portion of dues or assets may legally be used for general employee organization purposes or may be subject to the claims of general creditors of the employee organization, and

(B) The employee organization constitution or by-laws are amended as soon as possible following normal procedures (e.g., at the next regularly scheduled employee organization convention, in the case of a constitution or by-laws which provide for amendment in regularly scheduled conventions) to reflect accurately the status of the plan.

(b) Application. This exemption is available only to pension benefit plans maintained by an employee organization, as that term is defined in Section 3(4) of the Act, paid for out of the employee organization's general assets, which are derived wholly or partly from membership dues, and which cover employee organization members and their beneficiaries.

(c) Limitations. This exemption does not exempt the administrator from any other requirement of Part I of Title I of the Act. (Added by 42 FR 37178, effective July 19, 1977.)

Section 2520.104-28 Extension of time for filing and disclosure of the initial summary plan description. -

(a) General. An employee benefit plan may, for good cause as determined by the plan administrator, extend the date to file and disclose the initial summary plan description or supplement for a period of 60 days from the date provided in Section 2520.104a-3 and Section 2520.104b-2. This extension is available to all employee benefit plans except for those plans described in paragraph (c), which may use the extension procedure provided under that paragraph.

(b) Requirements. In order for an employee benefit plan to extend the date for filing and disclosure of the initial summary plan description or supplement, the plan administrator of a plan must

(1) Determine that there is good cause for the extension. The following are examples of situations for which good cause could be found. This list is not exclusive and other situations may also constitute good cause for extending the date for filing and disclosure:

(i) A plan whose summary plan description or supplement is being prepared by a consulting company, insurance carrier or service, or other person that engages in the preparation of summary plan descriptions or supplements, where the volume of work of such persons exceeds the capacity to finish preparation of these documents before the time to file and disclose them under Section 2520.104a-3 and Section 2520.104b-2.

(ii) A plan of a plan sponsor which has 20 or more classes of participants for which separate summary plan descriptions or supplements will be filed and disclosed.

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(2) Furnish with the initial summary plan description or supplement a statement describing the good cause for which the date for filing and disclosure was extended.

(c) Plans involved in collective bargaining negotiations. The plan administrator of a plan which by the terms of a collective bargaining agreement may be the subject of collective bargaining negotiations within a period of 120 days prior to, or after, the date for filing and disclosure of the summary plan description or supplement under section 2520.104a-3 and Section 2520.104b-2, may extend the requirement to file and disclose the summary plan description or supplement for a period not to exceed 90 days from the date of conclusion of the new collective bargaining agreement. A statement explaining the basis upon which the date was extended must be furnished with the summary plan description or supplement.

(d) Limitation. This extension procedure is available only for an employee benefit plan which is subject to Part I of Title I on or before July 19, 1977. (Added by 42 FR 37178, published July 19, 1977; amended and finalized by 45 FR 14029, effective April 3, 1980.)

Section 2520.104-41 Simplified annual reporting requirements for plans with fewer than 100 participants.

(a) General.

(1) Under the authority of Section 104(a)(2)(A), the Secretary of Labor may prescribe simplified annual reporting for employee pension benefit plans with fewer than 100 participants.

(2) Under the authority of Section 104(a)(3), the Secretary of Labor may provide a limited exemption for any employee welfare benefit plan with respect to certain annual reporting requirements.

(b) Application. The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and is required to file an annual report under Section 104(a)(1)(A) of the Act and Section 2520.104a-5 shall, except as permitted under Section 2520.103-1(d), file the simplified annual report described in paragraph (c) of this section. (Corrected April 4, 1978, by 43 FR 14010. Amended July 29, 1980 by 45 FR 51446.)

(c) Contents. The administrator of an employee pension or welfare benefit plan which covers fewer than 100 participants shall file a Form 5500-C "Return-Report of Employee Benefit Plan (with fewer than 100 participants)," or, as appropriate, a Form 5500-R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," in the manner prescribed in Section 2520.104a-5. (Amended March 1, 1989 by 54 FR 8624.)

The administrator of an employee pension Keogh plan which covers fewer than 100 participants, at least one of whom is an owner/employee, as defined in Section 401(c)(3) of the Internal Revenue Code of 1954, shall file a Form 5500-K "Return/Report of Employee Pension Benefit Plan for Sole Proprietorships and Partnerships (with fewer than 100 participants and at least one owner-employee)," or, as appropriate, a Form 5500-R "Registration Statement of Employee Benefit Plan (with fewer than 100 participants)," in the manner prescribed in Section 2520.104a-5. (Added March 9, 1978, by 43 FR 10130. Amended July 29, 1980 by 45 FR 5144~5.)

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Section 2520.104-42 waiver of certain actuarial information in the annual report. Under the authority of Section 104(a)(2)(A) of ERISA, the requirement of Section 103(d)(6) of ERISA that the annual report include as part of the actuarial statement (Schedule B) the present value of all of the plan's liabilities for non-forfeitable pension benefits allocated by termination priority categories, as set forth in Section 4044 of Title IV of ERISA, and the actuarial assumptions used in these computations, is waived. (Amended January 23, 1979, by 44 FR 5440.)

Section 2520.104-43 Exemption from annual reporting requirement for certain group insurance arrangements.

(a) General. Under the authority of section 104(a)(3) of the Act, the administrator of an employee welfare benefit plan which meets the requirements of paragraph (b) of this Section is not required to file an annual report with the Secretary of Labor as required by Section 104(a)(1)(A) of the Act.

(b) Application.

(1) This exemption applies only to a welfare plan for a plan year in which (i) such plan meets the requirements of Section 2520.104-21, except the requirement that the plan cover fewer than 100 participants at the beginning of the plan year, and (ii) an annual report containing the items set forth in Section 2520.103-2 has been filed with the Secretary of Labor in accordance with Section 2520.104a by the trust or other entity which is the holder of the group insurance contracts by which plan benefits are provided and the conduit for payment of premiums for such policies.

(2) For purposes of this Section, the term "trust or other entity" shall be used in place of the term "plan" or "plan administrator" as applicable, in Sections 2520.103-3, 2520.103-4, 2520.103, 2520.103-7(b)(1), 2520.103-8, 2520.103-9, 2520.103-10, and 2520.10445.

(c) Limitation. This provision does not exempt the administrator of an employee benefit plan which meets the requirements of paragraph (b) from furnishing a copy of a summary annual report to participants and beneficiaries of the plan, as required by Section 104(b)(3) of the Act. (Added March 9, 1978, by 43 F.R. 10130.)

Section 2520.104-44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and by certain insured plans.

(a) General.

(1) Under the authority of Section 104(a)(3) of the Act, the Secretary of Labor may exempt an employee welfare benefit plan from any or all of the reporting and disclosure requirements of Title I. An employee welfare benefit plan which meets the requirements of paragraph (b)(1) of this Section is not required to comply with the annual reporting requirements described in paragraph (c) of this Section. (Amended July 29, 1980 by 45 FR 51446.)

(2) Under the authority of Section 110 of the Act, an alternative method of compliance is prescribed for certain employee pension benefit plans subject to Part 1, Title I of the Act. An employee pension benefit plan which meets the requirements of paragraph (b)(2) of this Section is not required to comply with the annual reporting requirements described in paragraph (c) of this Section.

(b) Application. This Section applies only to:

(1) An employee welfare benefit plan under the terms of which benefits are to

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be paid

(i) Solely from the general assets of the employer or employee organization maintaining the plan;

(ii) The benefits of which are provided exclusively through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State or through a qualified health maintenance organization as defined in Section 1310(d) of the Public Health Service Act, as amended, 42 U.S.C. Section 300e-9(d), the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members, provided that any plan assets held by such an insurance company are held solely in the general account of such company or organization, contributions by participants are forwarded by the employer or employee organization within three months of receipt and, in the case of a plan that provides for the return of refunds to contributing participants, such refunds are returned to them within three months of receipt by the employer or employee organization, or (Amended by 46 FR 5882, originally scheduled to be effective February 20, 1981. However the effective date was delayed under the President's regulation freeze until March 30, 1981 (46 FR 11253).)

(iii) Partly in the manner specified in paragraph (b)(1)(i) of this section and partly in the manner specified in paragraph (b)(1)(ii) of this section; and

(2) A pension benefit plan the benefits of which are provided exclusively through allocated insurance contracts or policies which are issued by, and pursuant to the specific terms of such contracts or policies benefit payments are fully guaranteed by an insurance company or similar organization which is qualified to do business in any State, and the premiums for which are paid directly by the employer or employee organization from its general assets or partly from its general assets and partly from contributions by its employees or members: Provided, that contributions by participants are forwarded by the employer or employee organization to the insurance company or organization within three months of receipt and, in the case of a plan that provides for the return of refunds to contributing within three months of receipt by the employer or employee organization.

(c) Contents. An employee benefit plan described in paragraph (b) of this section is exempt from complying with the following annual reporting requirements:

(1) Completing certain items of the appropriate Return/Report form relating to financial information and transactions entered into by the plan. See the instructions on the forms for "Insured Plans" (Amended July 29, 1980 by 45 FR 51446.)

(2) Engaging an independent qualified public accountant pursuant to Section 103(a)(3)(A) of the Act and Section 2520.103-1(b) to conduct an examination of the financial statements and schedules of the plan; and

(3) Including in the annual report a report of an independent qualified public accountant concerning the financial statements and schedules required to be a part of the annual report pursuant to Section 103(b) of the Act and Section

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2520.103-1(b).

(d) Limitation. This Section does not exempt any plan from filing an annual report form with the Secretary in accordance with Section 104(a)(1)(A) of the Act and Section 2520.104a-5.

(e) Example. A welfare plan which is funded entirely with insurance contracts and which meets all the requirements of exemption under Section 2520.104-20 except that it covers 100 or more participants at the beginning of the plan year is not exempt from the annual reporting requirements under Section 2520.104-20, but is exempt from certain reporting requirements under Section 2520.104-44. Under the latter Section, such a welfare plan should file Form 5500, including Schedule A "Insurance Information." However, the plan is not required to engage an independent qualified public accountant and need not complete certain items on Form 5500. (Added March 9 1978, by 43 FR 10130 and amended by 45 FR 51446 on July 29, 1980.)

Section 2520.104-45 Temporary exemption from reporting insurance fees and commissions for insured plans with fewer than 100 participants.

(a) General.

(1) Under the authority of Section 104(a)(3) of the Act, the Secretary of Labor may exempt an employee welfare benefit plan from any or all of the reporting and disclosure requirements of Title I. The administrator of an employee welfare benefit plan which meets the requirements of paragraph (b) of this Section is exempt from complying with the annual reporting requirements described in paragraph (c) of this Section.

(2) Under the authority of Section 110 of the Act, the Secretary of Labor may prescribe an alternative method of compliance for employee pension benefit plans subject to Part I, Title I, of the Act. The administrator of an employee pension benefit plan which meets the requirements of paragraph (b) of this Section is not required to comply with the annual reporting requirements described in paragraph (c) of this Section

(b) Application. (1) The provisions of this Section apply only to welfare and pension plans which cover fewer than 100 participants at the beginning of the plan year and which provide benefits in whole or in part through insurance contracts or policies issued by an insurance company or similar organization which is qualified to do business in any State.

(c) Contents. A plan which meets the requirements of paragraph (b) is not required to include in the annual report filed in accordance with Section 104(a)(1)(A) of the Act and Section 2520.104a-5 or Section 2520.104a-6 the following information described under sections 103(c) and (e) of the Act:

(1) The name and address of any insurance agent, broker or other person to whom insurance commissions, salaries or fees are paid;

(2) The amount paid to each; and

(3) The purpose for which such payment is made.

(d) Limitation. The provisions of this section apply only to the annual report

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required to be filed for the plan years beginning in 1975 and 1976. (Added March 9, 1978, by 43 FR 10130.)

Section 2520.104-46 waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.

(a) General.

(1) Under the authority of Section 103(a)(3)(A) of the Act, the Secretary may waive the requirements of Section 103(a)(3)(A) in the case of a plan for which simplified annual reporting has been prescribed in accordance with Section 104(a)(2) of the Act.

(2) Under the authority of Section 104(a)(3) of the Act the Secretary may exempt any employee welfare benefit plan from certain annual reporting requirements.

(b) Application.

(1) The administrator of an employee pension plan for which simplified annual reporting has been prescribed in accordance with Section 104(a)(2)(A) of the Act and Section 2520.104-41 is not required to comply with the annual reporting requirements described in paragraph (c) of this Section.

(2) The administrator of an employee welfare benefit plan that covers fewer than 100 participants at the beginning of the plan year is not required to comply with annual reporting requirements described in paragraph (c) of this Section. (Added March 9, 1978, by 43 FR 10130.)

(c) waiver. The administrator of a plan described in paragraph (b)(1) or (2) of this Section is not required to:

(1) Engage an independent qualified public accountant to conduct an examination of the financial statements of the plan;

(2) Include within the annual report the financial statements and schedules prescribed in Section 103(b) of the Act and Sections 2520.103-2520.103-2, and 2520.103-10; and

(3) Include within the annual report a report of an independent qualified public accountant as prescribed in Section 103(a)(3)(A) of the Act and Section 2520.103-1.

(d) Limitations.

(1) The waiver described in this Section does not affect the obligation of a plan described in paragraph (b)(1) or (2) of this Section does not affect the obligation of a plan described in paragraph (b)(1) or (2) of this Section to file a Form 5500-C or, as appropriate, Form 5500-R and all schedules called for therein. See Section 2520.104-41.

(2) This section does not apply to a plan which elects to file an Annual  
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Return/Report Form 5500 pursuant to Section 2520.103-1(d). (Corrected April 4, 1978 by 43 FR 14010; amended July 29, 1980 by 45 FR 51446; amended March 1, 1989 by 54FR8624.)

Section 2520.104-47 Limited exemption and alternative method of compliance for filing of insurance company financial reports. An administrator of an employee benefit plan, which Section 103(e)(2) of the Act applies shall be deemed in compliance with the requirement to include with its annual report a copy of the financial report of the insurance company, insurance service or similar organization, provided that the administrator files a copy of such report within 45 days of receipt of a written request for such report by the Secretary of Labor. (Added by 45 FR 14034, effective March 4, 1980.)

Section 2520.104-48 Alternative Method of Compliance for Model Simplified Employee Pensions - IRS Form 5305-SEP. Under the authority of Section 110 of the Act the provisions of this Section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in Part I of Title I of the Employee Retirement Income Security Act of 1974 in the case of a simplified employee pension (SEP) described in Section 408(k) of the Internal Revenue Code of 1954 as amended (the Code) that is created by use without modification of Internal Revenue Service (IRS) Form 5305-SEP.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter), the administrator of the SEP (generally the employer establishing and maintaining the SEP) shall furnish the employee with a copy of the completed and unmodified IRS Form 5305-SEP used to create the SEP, including

- (1) the completed Contribution Agreement
- (2) the General Information and Guidelines, and
- (3) the Questions and Answers.

(b) Following the end of each calendar year the administrator of the SEP shall notify each participant in the SEP in writing of any employer contributions made under the Contribution Agreement to the participant's individual retirement account or individual retirement annuity (IRA) for that year.

(c) If the employer establishing and maintaining the SEP selects, recommends, or in any other way influences employees to choose a particular IRA or type of IRA into which contributions under the SEP will be made, and if that IRA is subject to restrictions on a participant's ability to withdraw funds (other than restrictions imposed by the Code that apply to all IRAs), the administrator of the SEP shall give to each employee, in writing, within 90 days of the adoption of this regulation or at the time such employee becomes eligible to participate in the SEP, whichever is later, a clear explanation of those restrictions and a statement to the effect that other IRAs, into which rollovers or employee contributions may be made may not be subject to such restrictions. (Added by 45 FR 24866, adopted and effective April 8, 1980)

Section 2520.104-49 Alternative method of compliance for certain simplified employee pensions. Under the authority of Section 110 of the Act, the provisions of this Section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in Part I of Title I of the Act for a simplified employee pension (SEP) described in Section 408(k) of the Internal Revenue Code of 1954 as amended, except for (1) a SEP that is created by proper use of Internal Revenue Service Form 5305-SEP, or (2) a SEP in connection with which the employer who establishes or maintains the SEP selects, recommends or influences its employees to choose the IRAs into which employer contributions will be made and those IRAs are subject to provisions that prohibit withdrawal of funds by SEP-IRA, or retirement bond, and how such a participants for any period of time.

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(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter) or up to 90 days after the effective date of this regulation, whichever is later, the administrator of the SEP (generally the employer establishing or maintaining the SEP) shall furnish the employee in writing with:

(1) Specific information concerning the SEP, including:

(i) The requirements for employee participation in the SEP,

(ii) The formula to be used to allocate employer contributions made under the SEP to each participant's individual retirement account or annuity (IRA).

(iii) The name or Title of the individual who is designated by the employer to provide additional information to participants concerning the SEP, and

(iv) If the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions under the SEP will be made, a clear explanation of the terms of those IRAs, such as the rate(s) of return and any restrictions on a participant's ability to roll over or withdraw funds from the IRAs, including restrictions that allow rollovers or withdrawals but reduce earnings of the IRAs or impose other penalties.

(2) General information concerning SEPs and IRAs, including a clear explanation of:

(i) what a SEP is and how it operates,

(ii) The statutory provisions prohibiting discrimination in favor of highly compensated employees.

(iii) A participant's right to receive contributions under a SEP-and the allowable sources of contributions to a SEP-related IRA (SEP-IRA),

(iv) The statutory limits on contributions to SEP-IRAs,

(v) The consequences of excess contributions to a SEP-IRA and how to avoid excess contributions,

(vi) A participant's rights with respect to contributions made under a SEP to his or her IRA(s),

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(vii) How a participant must treat contributions to a SEP-IRA for tax purposes,

(viii) The statutory provisions concerning withdrawal of funds from a SEP-IRA and the consequences of a premature withdrawal, and

(ix) A participant's ability to roll over or transfer funds from a SEP-IRA to another IRA, rollover or transfer may be effected without causing adverse tax consequences.

(3) A statement to the effect that:

(i) IRAs other than the IRA(s) into which employer contributions will be made under the SEP may provide different rates of return and may have different terms concerning, among other things, transfers and withdrawals of funds from the IRA(s),

(ii) In the event a participant is entitled to make a contribution or rollover to an IRA, such contribution or rollover can be made to an IRA other than the one into which employer contributions under the SEP are to be made, and

(iii) Depending on the terms of the IRA into which employer contributions are made, a participant may be able to make rollovers or transfers of funds from that IRA to another IRA.

(4) A description of the disclosure required by the Internal Revenue Service to be made to individuals for whose benefit an IRA is established by the financial institution or other person who sponsors the IRA(s) into which contributions will be made under the SEP.

(5) A statement that, in addition to the information provided to an employee at the time he or she becomes eligible to participate in a SEP, the administrator of the SEP must furnish each participant:

(i) within 30 days of the effective date of any amendment to the terms of the SEP, a copy of the amendment and a clear written explanation of its effects, and

(ii) No later than the later of:

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- (A) January 31 of the year following the or year for which a contribution is made,
  - (B) 30 days after a contribution is made,
  - (C) 30 days after the effective date of this regulation written notification of any employer contributions made under the SEP to that participant's IRA(s).
- (6) In the case of a SEP that provides for integration with social security.
- (i) A statement that social security taxes paid by the employer on account of a participant will be considered as an employer contribution under the SEP to a participant's SEP-IRA for purposes of determining the amount contributed to the SEP-IRA(s) of a participant by the employer pursuant to the allocation formula,
  - (ii) A description of the effect that integration with social security would have on employer contributions under a SEP, and
  - (iii) The integration formula, which may constitute part of the allocation formula required by paragraph (a)(1)(ii) of this section.
- (b) (1) The requirements of paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii) and (a)(6)(i) of this regulation may be met by furnishing the SEP agreement to participants, provided that the SEP agreement is written in a manner reasonably calculated to be understood by the average plan participant.
- (2) The requirements of paragraph (a)(1)(iv) of this regulation may be met through disclosure materials furnished by the financial institution in which the participant's IRA is maintained, provided the materials contain the information specified in such paragraph.
- (c) No later than the later of:
- (1) January 31 of the year following the year for which, a contribution is made,
  - (2) 30 days after a contribution is made, or
  - (3) 30 days after the effective date of this regulation the administrator of the SEP shall notify a participant in the SEP in writing of any employer contributions made under the SEP to the participant's IRA(s).

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(d) within 30 days of the effective date of any amendment to the terms of the SEP, the administrator shall furnish each participant a copy of the amendment and a clear explanation in writing of its effect. (Adopted by 46 FR 1261, originally scheduled to be effective February 6, 1981. However, the effective date was delayed under the President's regulation freeze at least until March 30, 1981 (46 FR 10465).)

Section 2520.104-50 Short plan years, deferral of accountant's examination and report.

(a) Definition of "short plan year." For purposes of this section, a short plan year is a plan year, as defined in Section 3(39) of the Act, of seven or fewer months' duration, which occurs in the event that

- (1) a plan is established or commences operations;
- (2) a plan is merged or consolidated with another plan or plans;
- (3) a plan is terminated; or
- (4) the annual date on which the plan year begins is changed.

(b) Deferral of accountant's report. A plan administrator is not required to include the report of an independent qualified public accountant in the annual report for the first of two consecutive plan years, one of which is a short plan year, provided that the following conditions are satisfied:

(1) The annual report for the first of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with the requirements of Section 103(b) of the Act and regulations promulgated thereunder;

(ii) An explanation why one of the two plan years is of seven or fewer months' duration; and

(iii) A statement that the annual report for the immediately following plan year will include a report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both of the two plan years.

(2) The annual report for the second of the two consecutive plan years shall include:

(i) Financial statements and accompanying schedules prepared in conformity with Section 103(b) of the Act and regulations promulgated thereunder with respect to both plan years;

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(ii) A report of an independent qualified public accountant with respect to the financial statements and accompanying schedules for both plan years; and

(iii) A statement identifying any material differences between the unaudited financial information relating to, and contained in the annual report for, the first of the two consecutive plan years and the audited financial information relating to that plan year contained in the annual report for the immediately following plan year.

(c) Accountant's examination and report. The examination by the accountant which serves as the basis for the portion of his report relating to the first of the two consecutive plan years may be conducted at the same time as the examination which serves as the basis for the portion of his report relating to the immediately following plan year. The report of the accountant shall be prepared in conformity with Section 103(a)(3)(A) of the Act and regulations thereunder. (Adopted December 30, 1980 by 46 FR 1265, effective December 29, 1980.)

### Subpart E - Reporting Requirements

Section 2520.104a-1 Filing with the Secretary of Labor.

(a) General reporting requirements. Part I of Title I of the Act requires that the administrator of an employee benefit plan subject to the provisions of Part I file with the Secretary of Labor certain reports and additional documents. Each report filed shall accurately and comprehensively detail the information required. Where a form is prescribed, the reports shall be filed on that form. The Secretary may reject any incomplete filing. Reports and documents shall be filed as specified in this part.

(b) Exemption for certain welfare plans. See Sections 2520.104-20, 2520.104-21, 2520.104-22, 2520.104-24, and 2520.104-25.

(c) Alternative method of compliance for pension plans for certain selected employees. See Section 2520.104-23. (Added by 41 FR 16957, effective April 23, 1976.)

Section 2520.104a-2 Plan description reporting requirements.

(a) General obligation to file. Under Section 104(a)(1)(B) of the Act, the administrator of an employee benefit plan subject to the provisions of Part I of Title I of the Act shall file with the Secretary a plan description within 120 days after the plan becomes subject to Part I, and an updated plan description, which the Secretary shall not require more frequently than once every five years.

(b) (1) Fulfilling the filing obligation. The administrator of an employee benefit plan other than a plan described in paragraph (b)(2) of this section shall satisfy the requirements of Section 104(a)(1)(B) of the Act and paragraph (a) of this section by filing with the Secretary a summary plan description and an updated summary plan description in accordance with Section 104(a)(1)(C) of the Act and regulations issued thereunder.

(2) The administrator of an apprenticeship plan exempted under Section 2520.104-22 from certain reporting and disclosure requirements shall satisfy the requirements of Section 104(a)(1)(B) of the Act and paragraph (a) of this section by filing with the Secretary a Department of Labor Form EBS-I "Plan Description" as described in Section 2520.102-1(b).

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(c) Special rules for plans subject to deferred initial reporting requirements. See Section 2520.104-3, Section 2520.104-5, and Section 2520.104-6. (Amended by 44 FR 31640, effective June 1, 1979).

Section 2520.104a-3 Summary plan description.

(a) Filing obligation. The administrator of a plan subject to the provisions of Part I of Title I of the Act shall file with the Secretary of Labor a copy of the summary plan description, including any supplement which is required to be furnished to participants covered under the plan and pension plan beneficiaries receiving benefits under the plan, as well as a copy of the statement of ERISA rights. The copy of the summary plan description shall be filed on or before the last date on which a summary plan description may be furnished to such plan participants and beneficiaries under Section 104(b)(1)(B) of the Act and Section 2520.104b-2. (Amended by 42 FR 37178, effective July 19, 1977.)

(b) Filing of multiple summary plan descriptions. In the case of a plan for which the plan administrator has chosen under Section 2520.102-4 to prepare more than one summary plan description, the plan administrator shall file with the Secretary a copy of each such summary plan description and a list identifying each such summary plan description. The name of the plan sponsor and the employer identification number (EIN) assigned to the plan sponsor by the Internal Revenue Service shall appear on the cover page of each summary plan description filed and also on the list of such summary plan descriptions.

(c) Terminated plans.

(1) If on or before the date by which a plan is required to file a summary plan description or updated summary plan description under this Section, the plan has terminated within the meaning of subparagraph (2), such plan is not required to file a summary plan description with the Secretary.

(2) For purposes of this section, a plan shall be considered terminated if:

(i) In the case of an employee pension benefit plan, all distributions to participants and beneficiaries have been completed; and

(ii) In the case of an employee welfare benefit plan, no claims can be incurred which will result in a liability of the plan to pay benefits. A claim is incurred upon the occurrence of the event or condition from which the claim arises (whether or not discovered).

(d) Filing address. The summary plan description shall be filed with the Secretary of Labor by mailing it to SPD, Pension and Welfare Benefits Administration, Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to Room N-5644, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC. (Amended on March 1, 1989 by 54 FR 8624.)

(e) Alternative requirements for plans subject to the alternative ERISA Notice requirements. See Section 2520.104b-2, and Section 2520.104-5 or Section 2520.104-6. See Section 2510.3-3(d). (Added by 42 FR 14266, effective March 15, 1977.)

Section 2520.104a-4 Material modifications to the plan and changes in plan description information.

(a) General obligation to file. The administrator of an employee benefit plan subject to the provisions of Part I of Title I of the Act shall file with the Secretary, as required by Section 104(a)(1)(D) of the Act, any material

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modifications in the terms of the plan or any changes in the information required by Section 102(b) of the Act.

(b) Fulfilling the filing obligation.

(1) The administrator of an employee benefit plan shall satisfy the requirements of Section 104(a)(1)(D) of the Act and Section 2520.104a-4(a) by filing with the Secretary a summary of material modifications or changes in information which is required by Section 2520.104b-3. The summary description of such material modifications or changes shall be filed, in accordance with Section 2520.104a-7, no later than the date on which the summary description is required to be disclosed to participants.

(2) The administrator of an employee benefit plan is not required to file a summary of any material modifications or changes in information required to be included in the summary description if such modifications or changes are.

(i) Incorporated in a summary plan description or supplement filed with the Secretary of Labor pursuant to Section 2520.104a-3;

(ii) Incorporated in the plan description filed with the Secretary within 120 days after the plan becomes subject to Part I of Title I of the Act and pursuant to Section 2520.104a-2.

(iii) Incorporated in an updated plan description filed with the Secretary pursuant to Section 104(a)(1)(B) of the Act.

(d) Effect. This Section is effective April 10, 1978, and supersedes prior Section 2520.104a-4 published on April 23, 1976 (41 FR 16964). (Corrected April 4, 1978, by 43 FR 14010.)

Section 2520.104a-5 Annual reporting filing requirements.

(a) Filing obligation. Except as provided in Section 2520.104a-6, the administrator of an employee benefit plan required to file an annual report pursuant to Section 104(a)(1)(A) of the Act shall file an annual report containing the items prescribed in Section 2520.103-1 within:

(1) Eleven and one half months after the close of the plan year which begins in 1975, or December 15, 1977, whichever is later; and

(2) Seven months after the close of any plan year which begins after December 31, 1975, unless extended. See "when to file" instructions of the appropriate annual Return/Report Form. (Corrected April 4, 1978, by 43 FR 14010.)

(b) where to file. The annual report described in Section 2520.103-1 shall be filed in accordance with and at the address provided in the instructions to the Annual Return/Report Form. (Added March 9, 1978, by 43 FR 10130.)

Section 2520.104a-6 Annual reporting for plans which are part of a group insurance arrangement.-

(a) General. A trust or other entity described in Section 2520.104-43(b) that files an annual report in accordance with the terms of subsections (b) and (c )

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shall be deemed to have filed such report in accordance with Section 2520.104a-6 for purposes of Section 2520.104-43.

(b) Date of Filing. The annual report shall be filed within:

(1) Eleven and one-half months after the close of the fiscal year of the trust or other entity described in Section 2520.104-43 with begins in 1975 or December 31, 1977, whichever is later; and

(2) Seven months after the close of the fiscal year of the trust or other entity which begins after December 31, 1975, unless extended. See "when to file" instructions of the appropriate Annual Return/Report Form (Corrected April 4, 1978, by 43 FR 14010).

(c) where to file. The annual report prescribed in Section 2520.103-2 shall be filed in accordance with and at the address provided in the instructions to the Annual Return/Report Form. (Added March 9, 1978. By FR 10130).

Section 2520.104a-7 Summary of material modifications. The administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of the Act, and not otherwise exempt from the requirement to file and distribute a summary plan description, shall file a summary description of modifications or changes described in Section 102(a)(1) of the Act with the Secretary no later than the date on which the summary description is required to be disclosed to participants and beneficiaries by Section 2520.104b-3.

(Added by 42 FR 37178, effective July 19, 1977, renumbered by 42 FR 60898, effective November 29, 1977; amended and finalized by 45 FR 14029, effective April 3, 1980.)

Subpart F Disclosure Requirements

Section 2520.104b-1 Disclosure. -

(a) General disclosure requirements. The administrator of an employee benefit plan covered by Part I of Title I of the Act must disclose certain material, including reports, statements, and documents, to participants and beneficiaries. Disclosure under Part I takes three forms.

(1) First, the plan administrator must, by direct operation of law, furnish certain material to all participants covered under the plan and beneficiaries receiving benefits under the plan (other than beneficiaries under a welfare plan) at stated times or if certain events occur. Second, the plan administrator must furnish certain material to individual participants and beneficiaries upon their request. Third, the plan administrator must make certain material available to participants and beneficiaries for inspection at reasonable times and places. distribution list for the periodical is comprehensive and up-to-date and a prominent notice on the front page of the periodical advises readers that the issue contains an insert with important information about rights under the plan and the Act which should be read and retained for future reference. If some participants and beneficiaries are not on the mailing list, a periodical must be used in conjunction with other methods of distribution such that the methods taken together are reasonably calculated to ensure actual receipt.

Material distributed through the mail may be sent by first, second, or third-class mail. However, distribution by second or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested. Any

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material sent by second or third-class mail which is returned with an address correction shall be sent again by first-class mail or personally delivered to the participant at his or her work site.

(2) For purposes of Section 104(b)(4) of the Act, materials furnished upon written request shall be mailed to an address provided by the requesting participant or beneficiary or personally delivered to the participant or beneficiary.

(3) For purposes of Section 104(b)(2) of the Act, where certain documents are required to be made available for examination by participants and beneficiaries in the principal office of the plan administrator and in such other places as may be necessary to make available all pertinent information to all participants and beneficiaries, disclosure shall be made pursuant to the provisions of this paragraph.

Such documents must be current, readily accessible, and clearly identified, and copies must be available in sufficient number to accommodate

(b) Fulfilling the disclosure obligation

(1) Where certain material including reports, statements, and documents, is required under Part 1 of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries. Material which is required to be furnished to all participants covered under the plan and beneficiaries receiving benefits under the plan (other than beneficiaries under a welfare plan) must be sent by a method or methods of delivery likely to result in full distribution. For example in-hand delivery to an employee at his or her work site is acceptable. However, in no case is it acceptable merely to place copies of the material in a location frequented by participants. It is also acceptable to furnish such material as a special insert in a periodical distributed to employees such as a union newspaper or a company publication if the distribution list for the periodical is comprehensive and up-to-date and a prominent notice on the front page of the periodical advises readers that the issue contains an insert with important information about rights under the plan and the Act which should be read and retained for future reference. If some participants and beneficiaries are not on the mailing list, a periodical must be used in conjunction with other methods taken together are reasonably calculated to ensure actual receipt.

Material distributed through the mail may be sent by first, second or third-class mail. However, distribution of second or third-class mail is acceptable only if return and forwarding postage is guaranteed and address correction is requested. Any material sent by second or third-class mail which is returned with an address correction shall be sent again by first-class mail or personally delivered to the participant at his or her work site.

(2) For purposes of Section 104(b)(4) of the Act, materials furnished upon written request shall be mailed to an address provided by the requesting participant or beneficiary or personally delivered to the participant or beneficiary.

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(3) For purposes of Section 104(b)(2) of the Act, where certain documents are required to be made available for examination by participants and beneficiaries in the principal office of the plan administrator and in such other places as may be necessary to make available all pertinent information to all participants and beneficiaries, disclosure shall be made pursuant to the provisions of this paragraph.

Such documents must be current, readily accessible, and clearly identified, and copies must be available in sufficient number to accommodate the expected volume of inquiries. Plan administrator shall make copies of the plan description, latest annual report, and the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated available at all times in their principal offices. They are not required to maintain these plan documents at all times at each employer establishment or union hall or office as described in paragraphs (B)(3)(i), (ii), and (iii) of this Section, but the documents must be made available at any such location within ten calendar days following the day on which a request for disclosure at that location is made.

Plan administrators shall make plan documents available at the appropriate employer establishment or union meeting hall or office within the required ten day period when a request is made directly to the plan administrator or through a procedure establishing reasonable rules governing the making of requests for examination of plan documents. If a plan administrator prescribes such a procedure and communicates it to plan participants and beneficiaries, a plan administrator will not be required to comply with a request made in a manner which does not conform to the established procedure. In order to comply with the requirements of this Section, a procedure for making requests to examine plan documents must permit requests to be made in a reasonably convenient manner both directly to the plan administrator and at each employer establishment, or union meeting hall or office where documents must be made available in accordance with this paragraph. If no such reasonable procedure is established, a good faith effort by a participant or beneficiary to request examination of plan documents will be deemed a request to the plan administrator for purposes of this paragraph.

(i) In the case of a plan not maintained according to a collective bargaining agreement, including a plan maintained by a single employer with more than one establishment, a multiple employer plan, and a plan maintained by a controlled group of corporations (within the meaning of Section 1563(a) of the Internal Revenue Code of 1954 (the Code), determined without regard to Section 1563(a)(4) and (e)(3)(C) of the Code), documents shall be made available for examination in the principal office of the employer and at each employer establishment in which at least 50 participants covered under a plan are customarily working. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. Where employees are engaged in activities which are physically dispersed, such as agriculture, construction, transportation, and communications, the "establishment" shall be the place to which employees report each day. When employees do not usually work at, or report to, a single establishment - for example, traveling salesmen, technicians, and engineers - the establishment shall be the location from which the employees customarily carry out their activities - for example the field office of an engineering firm servicing at least 50 participants covered under the plan.

(ii) In the case of a plan maintained solely by an employee organization, the

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plan administrator shall take measures to ensure that documents are available for examination at the meeting hall or office of each union local in which there are at least 50 participants covered under the plan. Such measures shall include distributing copies of the documents to each union local in which there are at least 50 participants covered under the plan.

(iii) In the case of a plan maintained according to a collective bargaining agreement, including a collectively bargained single employer plan with more than one establishment, a collectively bargained multiple employer plan, and a multi-employer plan which meets the definition of Section 3(37) of the Act, Section 2510.3-37 of this chapter, and Section 414(b) of the Internal Revenue Code of 1954 and 26 CFR Section 1.414(f) (40 CFR 43034), documents shall be made available for examination in the principal office of the employee organization and at each employer establishment in which at least 50 participants covered under the plan are customarily working. In employment situations where employees do not usually work at, or report to, a single establishment, the plan administrator shall take measures to ensure that plan documents are available for examination at the meeting hall or office of each union local in which there are at least 50 participants covered under the plan.

(c) Participant and beneficiary status for purposes of Sections 101(a) and 104(b)(1) of the Act and Subpart F of this part. See Section 2510.3-3(d)(1), 2510.3-3(d)(2), and 2520.3-3(d)(3) of this chapter. (Added by 41 FR 16957, effective April 23, 1976.)

Section 2520.104b-2 Summary plan description.

(a) Obligation to furnish. Under the authority of sections 104(b)(1) and 104(c) of the Act, the plan administrator of an employee benefit plan subject to the provisions of Part I of Title I shall furnish a copy of the summary plan description and a statement of ERISA rights as provided in Section 2520.102-3(t), to each participant covered under the plan (as defined in Section 2510.3-(d)), and each beneficiary receiving benefits under a pension plan on or before the later of:

(1) The date which is 90 days after the employee becomes a participant, or (in the case of a beneficiary receiving benefits under a pension plan) within 90 days after he or she first receives benefits, except as provided in Section 2520.104b-4(a), or,

(2) within 120 days after the plan becomes subject to Part I of Title I.

(3) (i) A plan becomes subject to Part I of Title I on the first day on which an employee is credited with an hour of service under Section 2530.200b-2 or Section 2530.200b-3. Where a plan is made prospectively effective to take effect after a certain date or after a condition is satisfied, the day upon which the plan becomes subject to Part I of Title I is the day after such date or condition is satisfied. Where a plan is adopted with a retroactive effective date, the 120 day period begins on the day after the plan is adopted. Where a plan is made retroactively effective dependent on a condition, the day on which the plan becomes subject to Part I of Title I is the day after the day on which the contingency occurs.

(ii) Examples: Company A is negotiating the purchase of Company B. On September 1, 1978, as part of the negotiations, Company A adopts a pension plan

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covering the employees of Company B. The plan provides that it shall take effect on the first day of the calendar year in which the purchase is concluded. On February 1, 1979, the negotiations conclude with Company A's purchase of Company B. The plan therefore becomes effective on February 1, 1979, retroactive to January 1, 1979. The Summary Plan Description must be filed and disclosed no later than 120 days after February 1, 1979 (Amended by 42 FR 37178, effective July 19, 1977; amended and finalized by 45 FR 14029, effective April 3, 1980.)

(b) Periods for furnishing updated summary plan description.

(1) For purposes of the requirement to furnish the updated summary plan description to each participant and each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan) required by Section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year within which occurs the later of

(i) November 16, 1983, or

(ii) Five years after the last date a change to the information required to be disclosed by Section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description), as described in Section 102 of this Act.

(2) In the case of a plan to which no amendments have been made between the end of the time period covered by the last distributed summary plan description (or updated summary plan description, described in Section 102 of the Act, and the next occurring applicable date described in paragraph (b)(1)( i) or (ii) of this Section, for purposes of the requirement to furnish the updated summary plan description to each participant, and to each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan), required by Section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year within which occurs the later of

(i) November 16, 1987, or

(ii) Ten years after the last date a change to the information required to be disclosed by Section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description), as described in Section 102 of this Act. (paragraph (b) was added on January 14, 1983, by FR Doc. 83-1002 (48 FR 1712).)

(c) Alternative ERISA Notice requirements. A plan which elected to comply with the alternative ERISA Notice procedure provided in Section 2520.104-5 or Section 2520.104-6 is not required to furnish a copy of the summary plan description to participants and beneficiaries until the time described in the applicable Section, and will be deemed to have satisfied the requirements of Section (104(b)(1)(B) of the Act until such time. Thereafter, the requirements of Section 104(b)(1)(B) of the Act and this Section must be met in full.

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(d) Use of form EBS-1 as summary plan description.

(1) The plan administrator of an employee benefit plan shall be deemed to have satisfied the requirements of Section 104(b)(1)(B) of the Act and this Section for the initial disclosure of the summary plan description if the plan administrator filed a summary plan description pursuant to proposed Section 2520.104a-3(d) of the June 9, 1975, proposed regulations (40 FR 24642); Section 2520.104 -3 as issued on April 30, 1975 (40 FR 19469, see also 40 FR 20628, May 12, 1975); proposed Sections 2522.40 and 2523.30 as published on December 4, 1974, (39 FR 42241), and the instructions on old form EBS-1 (bearing print date 4-74), and if the plan administrator furnished copies of a complete Form EBS-1 bearing print date 4-75 to participants covered under the plan.

(2) Under the authority of Section 104 ( c) of the Act, a plan described in sub-paragraph (1) shall furnish to participants covered under the plan and beneficiaries receiving benefits under the plan a statement of ERISA rights which complies with Section 2520.102-3(t) by November 16, 1977.

(e) Disclosure obligation for plans which filed and disclosed by May 30, 1976 in reliance upon regulations of the Department.

(1) The plan administrator of an employee benefit plan shall be deemed to have satisfied the requirements of Section 104(b)(1)(B) of the Act and this Section for the initial disclosure of the summary plan description if the plan administrator filed a summary plan description based upon the final regulations published in the Federal Register on August 15, 1975 (40 FR 34526) and on specific sections of the proposed regulations in the Federal Register on June 8, 1975 (40 FR 24642) in reliance upon the preamble to the final regulations published in the Federal Register on April 23, 1976 (41 FR 16957) and announced in Departmental press release USDL 76-706, published April 21, 1976, and if the plan administrator furnished to participants covered under the plan and pension plan beneficiaries receiving benefits under the plan copies of such summary plan description.

(2) Under the authority of Section 104(c) of the Act, a plan described in subparagraph (1) shall furnish to participants covered under the plan and beneficiaries receiving benefits under the plan a statement of ERISA rights which complies with Section 2520.102-3(t) by November 16, 1977.

(f) Disclosure obligation for other plans which previously disclosed the summary plan description.

(1) This Section applies to those employee benefit plans which have disclosed to participants covered under the plan and beneficiaries receiving benefits under a pension plan, a summary plan description on or after September 2, 1974, and before March 15, 1977, and which are not described in paragraph (4) or (e) of this Section.

(2) The plan administrator of an employee benefit plan described in subparagraph (1) shall be deemed to have satisfied the requirements of Section 104(b)(1)(B) of the Act of this Section for the initial disclosure of the summary plan description and the disclosure of the first updated summary plan description if the plan administrator.

(i) Furnishes to participants covered under the plan and pension plan beneficiaries receiving benefits under the plan by November 16, 1977, a copy of a

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supplement to the summary plan description which includes any items of information required by Section 2520.102-3 which were not included in the earlier document and which, taken together with the earlier document, meets the style and format requirements of Section 2520.102-2. The requirement of Section 2520.102-2(b) that benefit restrictions be described or cross-referenced adjacent to the description of benefits will be deemed satisfied if the supplement contains a statement which references participants to the descriptions of benefits and benefit restrictions in the summary plan description and describes their relationship;

(ii) Files with the Secretary, by November 16, 1977, a copy of the summary plan description described in paragraph (f)(1) and a copy of the supplement described in paragraph (f)(2)(i); and

(iii) Furnishes to participants and beneficiaries a summary plan description which meets the requirements of Sections 2520.102-2 and 2520.102-3 within five years (or ten years) of the date of disclosure described in subparagraph (i).

(g) Terminated plans.

(1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this Section, the plan has terminated within the meaning of subparagraph (2), the administrator of such plan is not required to file with the Secretary or to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

(2) For purposes of this section, a plan shall be considered terminated if:

(i) in the case of an employee pension benefit plan, all distributions to participants and beneficiaries have been completed; and

(ii) in the case of an employee welfare benefit plan, no claims can be incurred which will result in a liability of the plan to pay benefits. A claim is incurred upon the occurrence of the event or condition from which the claim arises (whether or not discovered).

(h) Alternative requirements for plans subject to the alternative ERISA Notice requirements. See Section 2520.104-5 or Section 2520.104-6. See Section 2510.3-3(d).

(i) style and format of the summary plan description. See Section 2520.102-2.

(j) contents of the summary plan description. See Section 2520.102-3.

(k) Option for different summary plan descriptions. See Section 2520.102-4, Section 2520.104-26, and Section 2520.104-27.

(1) Employee benefit plan - participant covered under a plan. See Section

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2510.3-3(d). (Added by 42 FR 14266, effective March 15, 1977; and amended by 42 FR 37178, effective July 19, 1977.)

Section 2520.104b-3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.

(a) The administrator of an employee benefit plan subject to the provisions of Part I of Title I of the Act shall, in accordance with Section 2520.104b-1(b), furnish a summary description of any material modification to the plan and any change in the information required by Section 102(b) of the Act and Section 2520.102-3 of these regulations to be included in the summary plan description to each participant covered under the plan and each beneficiary receiving benefits under the plan. The plan administrator shall furnish this summary, written in a manner calculated to be understood by the average plan participant, not later than 210 days after the close of the plan year in which the modification or change was adopted. This disclosure date is not affected by retroactive application to a prior plan year of an amendment which makes a material modification to the plan, a modification does not occur before it is adopted. For example, a calendar year plan adopts a modification in April 1978. The modification, by its terms, applies retroactively to the 1977 plan year. A summary description of the material modification is furnished on or before July 29, 1979. A plan which adopts an amendment which makes a material modification to the plan which takes effect on a date in the future must disclose a summary of that modification within 210 days after the close of the plan year in which the modification or change is adopted. Under the authority of sections 104(a)(3) and 110 of the Act, a summary description of a material modification or change is not required to be disclosed if it is rescinded or otherwise does not take effect. For example, a calendar year plan adopts a modification in June 1978. The modification, by its terms, becomes effective beginning in plan year 1979. Before the beginning of plan year 1979, the prospective modification is withdrawn. No summary of the material modification is required to be disclosed.

(b) The summary of material modifications to the plan or changes in information required to be included in the summary plan description need not be furnished separately if the changes or modifications are described in a timely summary plan description. For example, a calendar year plan adopts a material modification on June 3, 1976. The modification is incorporated in a summary plan description furnished on July 15, 1977. No separate summary of the material modification is furnished. The plan adopts another material modification September 15, 1977. A separate summary of the modification is furnished on or before July 29, 1978.

(c) The copy of the summary plan description furnished in accordance with Section 2520.104b-2(a)(1)(i) and 2520.104b-4 shall be accompanied by all summaries of material modifications or changes in information required to be included in the summary plan description which have not been incorporated into that summary plan description.

(d) Alternative requirements for plans subject to alternative ERISA Notice requirements. See Section 2520.104a-3, Section 2520.104b-2 and Section 2520.104-5 or 2520.104-6.

(e) Filing obligation for all other plans which previously filed and disclosed the summary plan description. See Section 2520.104a-3. (Added by 42 FR 14266, effective March 15, 1977.)

Section 2520.104b-4 Alternative methods of compliance for furnishing the summary plan description and summaries of material modifications of a pension plan to a retired participant, a separated participant with vested benefits, and a beneficiary receiving benefits. Under the authority of Section 110 of the Act, in the case of an employee pension benefit plan

(a) Summary plan descriptions. A plan administrator will be deemed to satisfy the requirements of section 104(b)(1) of the Act and Section 2520.104b-2(a) to furnish a copy of the initial summary plan description to a retired participant, a beneficiary receiving benefits, or a separated participant with vested benefits ("vested

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separated participant") if, no earlier than the date stated in subparagraph (4) of this paragraph.

(1) In the case of a retired participant or a beneficiary receiving benefits, a document is furnished which

(i) Meets the requirements of sections 2520.102-2 and 2520.102-3 except paragraphs (b)(3), (b)(4), (i), (k), (l), (n), (o), and (p);

(ii) Contains a statement that the benefit payment presently being received by the retired participant or beneficiary receiving benefits will continue in the same amount and for the period provided in the mode of settlement selected at retirement, and will not be changed except as described in subparagraph (iii); and

(iii) Contains a statement describing any plan provision under which the present benefit payment may be reduced, changed, terminated, forfeited, or suspended;

(2) In the case of a vested separated participant, a document is furnished which

(i) Meets the requirements of sections 2520.102-2 and 2520.102-3 except paragraphs (b)(3), (b)(4), (j), (l), (n), (o), (p), and (r);

(ii) (A) If at or after separation, a separated vested participant was furnished a statement of the dollar amount of the vested benefit or the method of computation of the benefit, includes a statement that the dollar amount of the vested benefit was previously furnished and that a copy of the previously furnished statement of the dollar amount of such vested benefit or method of computation of the benefit may be obtained from the plan upon request;

(B) If the vested separate participant was not furnished a statement of the dollar amount of the vested benefit or the method of computation of the benefit, the plan furnishes either a statement of the dollar amount of the vested benefit, or a statement of the formula used to determine the dollar amount of the vested benefit;

(iii) Includes a statement of the form in which the benefits will be paid and duration of the payment period or a description of the optional modes of payment available under the plan; and

(iv) Includes a statement describing any plan provision under which a benefit may be reduced, changed, terminated, forfeited, or suspended; or

(3) (i) Such retired participant, vested separated participant, or beneficiary receiving benefits was furnished with a copy of a document which

(A) Satisfies the requirements of Section 102(a)(1) of the Act and section 2520.102-2 (relating to the style and format of the summary plan description) and section 2520.102-3 (relating to the content of the summary plan description);

(B) Describes the rights and obligations under the plan of such retired participant, vested separated participant, or beneficiary receiving benefits as of the date stated in subparagraph (4);

(ii) In the case of a person who retired, became a beneficiary, or separated with vested benefits before November 16, 1977, a document will be deemed to comply with the requirements of subparagraph (i) if the document omitted only information described in one or more of the provisions of section 2520.102-3 listed below, provided that a supplement containing such information, which meets the requirements of section 2520.102-2, is furnished to the retired participant, vested separated participant, or beneficiary receiving benefits by November 16, 1977.

(A) Employer identification number (EIN), as required by section 2520.102-3(c);

(B) Type of administration, as required by section 2520.102-3(e);

(C) Name of agent for service of legal process, as required by section 2520.102-3(g);

(D) Names and addresses of trustees, as required by section 2520.102-3(h);

(E) Statement regarding plan termination insurance as required by section 2520.102-3(m);

(F) Date of the end of the fiscal year, as required by section 2520.102-3(r); or

(G) Statement of ERISA rights, as required by section 2520.102-3(t).

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(4) For purposes of this paragraph the dates are: for a vested separated participant, the date of separation; for a beneficiary, the Date on which payment of benefits commences; and for a retired participant, the date of retirement.

(b) Updated summary plan descriptions. A copy of an updated summary plan description need not be furnished as prescribed in Section 104(b)(1) of the Act and Section 2520.104b-2(b) to a retired participant, vested separated participant, or a beneficiary receiving benefits if

(1) (i) On or after the date stated in subparagraph (ii), the retired participant, vested separated participant, or beneficiary is furnished with a copy of the most recent summary plan description and a copy of any summaries of material modifications not incorporated in such summary plan description;

(ii) For purposes of subparagraph (i) the dates are: for a retired participant, the date of retirement, for a vested separated participant, the date of separation; and for a beneficiary, the date on which payment of benefits commences;

(2) No later than the date on which an updated summary plan description is furnished to participants and beneficiaries as prescribed by section 104(b)(1) of the Act and Section 2520.104b-2(b), a retired participant, vested separated participant, or beneficiary receiving benefits is furnished a notice containing the following:

(i) A statement that the benefit rights of such retired participant, vested separated participant, or beneficiary receiving benefits are set forth in the earlier summary plan description and any subsequently furnished summaries of material modifications (see paragraph (c)), and

(ii) A statement that such retired participant, vested separated participant, or beneficiary receiving benefits may obtain a copy of the earlier summary plan description and summaries of material modifications described in subparagraph (i), and the updated summary plan description, without charge, upon request, from the plan administrator; and

(3) The plan administrator furnishes a copy of the documents described in subparagraph (2)(ii) to such retired participant, vested separated participant or beneficiary, without charge, upon request.

(c) Summary of material modifications or changes. A summary description of a material modification to the plan or a change in the information required to be included in the summary plan description need not be furnished to a retired participant, a vested separated participant or a beneficiary receiving benefits under the plan, within the time prescribed in Section 104(b)(1) of the Act and Section 2520.104b-3 for furnishing summary descriptions of such modifications and changes, if the material modification or change in no way affects such retired participant's, vested separated participant's, or beneficiary's rights under the plan. For example, a change in trustees is information which such a person may need to know in order to make inquiries about his or her rights expeditiously, and hence must be furnished. On the other hand, a modification in benefits under the plan to which such retired participant, vested separated participant, or beneficiary had not at any time been entitled (and would not in the future be entitled) would not affect his or her rights and hence need not be furnished. If such retired participant, vested separated participant or beneficiary requests a copy of a summary description of a material modification or a change which was not furnished, the plan administrator shall furnish the copy, without charge.

(d) Special rule for a plan which has previously furnished a summary plan description. A plan described in section 2520.104b-2(e) or (f) which did not specify and identify those items of information in the summary plan description pertinent to a class of participants or beneficiaries as required by Section 2520.102-2 must furnish, by November 16 1977, a supplement to the class which

(1) Identifies the information not relevant to the class, and

(2) Provides the information required to be furnished to the class under Section 2520.102-3, or under an alternative provided by this Section. (Added by 42 FR 14266, effective March 15 1977; amended by 42 FR 37178, effective July 19 1977; amended and finalized by 45 FR 14029, effective April 3, 1980.)

Section 2520.104b-5 ERISA Notice. -

(a) Obligation to furnish. The administrator of an employee benefit plan who elects the deferral provided by Section 2520.104-5 or 104-6 must furnish a copy of

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an ERISA Notice to participants and beneficiaries as described in those sections.

(b) Content, style and format.  
The ERISA Notice shall include:

- (1) the name of the plan,
- (2) the name, business address, business telephone number and Employer Identification Number of the plan administrator,
- (3) a statement describing certain reporting and disclosure provisions of the Act, including the requirements to:
  - (i) file with the Secretary of Labor a plan description, in accordance with sections 104(a)(1)(B) of the Act,
  - (ii) file with the Secretary an annual financial statement, in accordance with Section 104(a)(1)(A) of the Act,
  - (iii) furnish to participants and beneficiaries a summary of the annual financial report in accordance with Section 104(b)(3) of the Act,
  - (iv) furnish plan documents and information at a reasonable charge upon written request of a participant or beneficiary, in accordance with Section 104(b)(4) of the Act, and
  - (v) make plan documents available for examination at the plan administrator's office and certain other locations, in accordance with Section 104(b)(2) of the Act,
- (4) a statement that fiduciaries have obligations imposed by the Act to act prudently and solely in the interest of participants and beneficiaries of the plan,
- (5) in the case of pension plans,
  - (i) a statement that the plan must meet certain new standards for participation, vesting and accrual of benefits and a brief statement of them, and
  - (ii) a general explanation of the plan amendment process that the plan has followed or will follow to comply with ERISA, including the dates of the first plan

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year to which amendments must apply, and the impact of any retroactive amendment.

The ERISA Notice may contain explanatory and descriptive provisions in addition to those prescribed herein. However, the style and format of the ERISA notice shall not have the effect of misleading, misinforming or failing to inform participants and beneficiaries of a plan. Any additional explanatory information shall be written in a manner calculated to be understood by the average plan participant, taking into account factors such as the level of comprehension and education of typical participants in the plan and the complexity of the items required under this section to be included in the ERISA Notice. Inaccurate or misleading explanatory material will fail to meet the requirements of this section.

(c) Model ERISA Notice.

A plan administrator who uses the sample language of paragraph (1) or (2) will be deemed to meet the requirements of this section unless he has reason to know that the use of such language would be seriously misleading or incomplete as applied to the plan.

(1) Model ERISA Notice for pension plans.

On Labor Day of 1974 a new law was enacted to protect the interests of workers in pension and welfare benefits connected with their jobs. Its Title is "Employee Retirement Income Security Act of 1974", but it is often referred to by its initials - ERISA.

ERISA requires plan administrators, the people who run plans, to tell you the most important facts you need to know, in writing and free of charge. They must also let you look at plan documents, and buy copies of them at reasonable cost if you ask. ERISA says that pension plans must give you certain minimum rights. For example, ERISA controls when you can join the plan. Also, a great many people have control over employee benefit plans. ERISA says that these people called "fiduciaries" must act solely in your interest and must be prudent in carrying out their plan duties. ERISA also has other special rules that limit what a fiduciary is allowed to do. Fiduciaries who violate ERISA may be removed, and may have to make good losses they cause to the plan. Because ERISA contains many provisions which may affect your retirement benefits, you should contact (name of plan administrator, business address, business telephone and Employer Identification Number) before making decisions about your future or retirement plans.

ERISA requires (name of administrator), the administrator of (name of plan), to file certain information about the plan with the U.S. Department of Labor. A description of the plan's provisions must be filed with the Department of Labor by May 30, 1976. (Name of Administrator) must also file an annual report with the Department of Labor by (date). The annual report gives detailed financial information about the plan. (Name of plan administrator) is also required to send a summary of the annual financial report to you, at no charge.

In addition, plan documents and other plan information must be provided to you by

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(name of plan administrator) if you request this information in writing. (Name of Plan Administrator) may make a reasonable charge for these documents. You may wish to find out how much the charge will be before making a written request. However, all plan documents must be made available for your examination at (office address of plan administrator) and certain other locations, such as work sites and union halls, at no charge.

ERISA also requires the (name of plan) to meet certain new standards for pension plans. These minimum standards determine when an employee must become eligible to participate in a plan, when he or she has a vested right (one which cannot be taken away, except in limited circumstances) to certain benefits, and the rate at which benefits must accrue in the participant's behalf.

(Choose the appropriate one of the following two paragraphs.)

Optional Paragraph 1.

The (name of plan) has NOT been amended to meet these standards yet. ERISA requires that (name of plan) apply the new standards to the plan year starting on (start of 1976 plan year). But ERISA does not require the plan to make amendments by (start of 1976 plan year). The amendments may come later. When they are made, they must be applied back to (start of 1976 plan year). For example, if you were not eligible to join the plan under the rule in force (start of 1976 plan year), but the amendment would make you eligible, the plan must count you as a member starting with (start of 1976 plan year).

Optional Paragraph 2.

The (name of plan) already has been amended. However, further plan amendments may have to be made to comply with ERISA standards. (Name of plan administrator) will provide information regarding these amendments.

As a result of the modifications which will be made, your right to a pension and the form and amount of your pension may be affected. Regardless of your age, if you are thinking about changing jobs or retiring you should contact (administrator, personnel office) about your pension situation before making any decisions.

If you have any questions about this Notice or your rights, contact (name of plan administrator). Also, the nearest Area Office of the Labor Department has people who will be able to assist you or provide you with additional information.

(2) Model ERISA Notice for welfare plans.

On Labor Day of 1974 a new law was enacted to protect the interests of workers in pension and welfare benefits connected with their jobs. Its Title is "Employee Retirement Income Security Act of 1974" but it is often referred to by its initials, ERISA. ERISA requires plan administrators the people who run plans to tell you the most important facts you need to know, in writing and free of charge. They must also let you look at plan documents, and buy copies of them at reasonable cost if you

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ask. Also, a great many people have control over employee benefit plans. ERISA says that these people called "fiduciaries" must act solely in your interest and be prudent in carrying out their plan duties. ERISA also has other special rules that limit what a fiduciary is allowed to do. Fiduciaries who violate ERISA may be removed, and have to make good losses they cause to the plan.

ERISA requires (name of administrator), the administrator of (name of plan), to file certain information about the plan with the U.S. Department of Labor. A description of the plan's provisions must be filed with the Department of Labor by May 30, 1976. (Name of Administrator) must also file an annual report with the Department of Labor by (date). The annual report gives detailed financial information about the plan. (Name of plan administrator) is also required to send a summary of the annual financial report to you, at no charge.

In addition, plan documents and other plan information must be provided to you by (name of plan administrator) if you request this information in writing. (Name of Plan Administrator) may make a reasonable charge for these documents. You may wish to find out how much the charge will be before making a written request. However, all plan documents must be made available for your examination at (office address of plan administrator) and certain other locations, such as work site and union halls, at no charge.

Certain amendments in the (name of plan) may have been made or may be made to meet the requirements of ERISA. (Name of plan administrator) will provide information regarding these amendments.

If you have any questions about this Notice of your rights, contact (name of plan administrator). Also, the nearest Area Office of the Labor Department has people who will be able to assist you or provide you with additional information.

(d) Obligation to furnish for certain multi-employer plans. In the case of a multi-employer plan which was in existence on January 1, 1974, and which does not, as of May 30, 1976, maintain complete records of participants covered under the plan, the Secretary will consider that the plan administrator has used methods reasonably calculated to ensure timely receipt of the ERISA Notice by participants covered under the plan and beneficiaries receiving benefits under a pension plan if the plan administrator takes the following measures for compliance:

(1) No later than May 30, 1976, the plan administrator shall furnish a copy of the ERISA Notice to all participants and beneficiaries of a pension plan who, as of March 2, 1976, are receiving benefits under the plan.

(2) No later than May 30, 1976, the plan administrator shall take measures to distribute copies of the ERISA Notice to substantially all individuals who, as of March 2, 1976, are participants covered under the plan and who can be identified. These measures may include the following:

(i) The plan administrator may deliver copies of the ERISA Notice to employers whose employees are participants covered under the plan, or employee organizations whose members are participants covered under the plan, or to both, in sufficient quantity and sufficiently in advance of May 30, 1976, to enable such employers or

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employee organizations to furnish them to employees or members who are participants covered under the plan by that date.

(ii) The administrator may publish the ERISA Notice before May 30, 1976, in a periodical or periodicals, the circulation of which includes participants covered under the plan.

(3) The plan administrator shall take measures to ensure that all individuals who become participants covered under the plan after March 2, 1976 (see Section 2520.104-5 and .104-6) receive copies of the ERISA Notice within 90 days after becoming such participants. These measures may include the following:

(i) The plan administrator may deliver copies of the ERISA Notice to employers whose employees are participants covered under the plan, to employee organizations whose members are participants covered under the plan, or to both, in sufficient quantity and with sufficient frequency to enable such employers or employee organizations to furnish them to participants within 90 days after they become participants covered under the plan.

(ii) The plan administrator may publish the ERISA Notice or a statement that the Notice may be secured on request free of charge and how it may be secured, in a periodical or periodicals, the circulation of which includes participants covered under the plan, at regular intervals after May 30, 1976.

(4) In instances where the plan administrator relies on employers or employee organizations to perform duties relating to the distribution of the ERISA Notice to participants covered under the plan, the plan administrator should take whatever steps are necessary and feasible under the circumstances to ensure that employers or employee organizations actually perform those duties. For example, after a prompt meeting of the Board of Trustees of a multi-employer plan, a plan administrator secures written commitments from appropriate employers and employee organizations that they will distribute copies of the ERISA Notice to identifiable participants covered under the plan who are in their workforce or membership. (Added by 41 FR 16957, effective April 23, 1976).

Section 2520.104b-10 Summary Annual Report.

(a) Obligation to furnish. Except as otherwise provided in paragraphs (b) and (g) of this section, the administrator of any employee benefit plan shall furnish annually to each participant of such plan and to each beneficiary receiving benefits under such plan (other than beneficiaries under a welfare plan) a summary annual report conforming to the requirements of this section. Such furnishing of the summary annual report shall take place in accordance with the requirements of section 2520.104b-1 of this part.

(Amended on July 20, 1982, by 47 FR 31871.)

(b) Plans filing Form 5500C/R.. In the case of an employee benefit plan subject to section 2520.10441 (concerning simplified annual reporting for plans with fewer than 100 participants), the administrator, in lieu of furnishing a summary annual report for the year in which a Form 5500-R is filed, shall, in section 2520.104b-1,

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a copy of the Form 5500-R filed on behalf of the plan and the notice described in paragraph (b)(3). Such furnishing shall take place within thirty accordance with Section 2520.104b-1, furnish each participant of such plan and each beneficiary receiving benefits under such plan (other than beneficiaries under a welfare plan) either

(1) A copy of the Form 5500-R filed on behalf of the plan, and the notice described in paragraph (b)(3); or

(2) (i) A written notice stating that in lieu of a summary annual report a copy of the Form 5500-R filed on behalf of the plan will be furnished free of charge upon receipt of a written request. The notice shall contain the name and address of the plan administrator to whom such requests may be directed. The administrator, upon receipt of such a written request from a participant or beneficiary, shall furnish, free of charge and in accordance with days following receipt of a request.

(ii) The administrator of an employee benefit plan will be deemed to have furnished, in accordance with Section 2520.104b-1, the written notice described in paragraph (b)(2)(i) of this Section to participants, if the administrator posts the notice for a minimum of thirty days at work site locations, and in a manner reasonably calculated to ensure disclosure to plan participants. Participants who have retired or separated from service with vested benefits under a pension plan, beneficiaries receiving benefits under a pension plan, and other participants who could not reasonably be expected to visit such work site locations during the period when the notice is posted must be furnished the notice pursuant to paragraph (b)(2)(i) of this Section.

(iii) Nothing in paragraph (b)(2)(ii) of this Section shall preclude an administrator from posting a copy of the Form 5500-R filed on behalf of the plan with the required notice; however, such a posting shall not relieve an administrator from the requirement to furnish a copy of the Form free of charge upon receipt of a written request from any participant or beneficiary.

(3) Any Form 5500-R furnished in accordance with paragraphs (b)(1) or (b)(2)(i), of this Section, shall include the following notice:

Disclosure of Plan Information Under

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Attached is a copy of the most recent Registration Statement (Form 5500-R) for the employee benefit plan of which you are a participant or beneficiary (see item 4(a) on Form 5500-R). The Registration Statement contains information about the plan and has been filed with the Internal Revenue Service under the Employee Retirement Income Security Act of 1974 (ERISA).

This copy of Form 5500-R is being furnished to you in compliance with Department of Labor regulations which require it to be furnished to you free of charge either automatically or upon written request in lieu of the summary annual report for plan years for which Form 5500-R has been filed.

You also have the right to receive from the plan administrator (see item 1(a) or 2(a) on Form 5500-R), on request, a copy of Schedule A (Insurance Information) and Schedule B (Actuarial Information), which were filed with the attached Form 5500-R. The charge to cover copying costs will be (\$ ) for this/these Schedule(s), or (\$ )

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per page for any part thereof. You also have the legally protected right to examine these documents at the main office of the plan (address, if different from Form 5500-R, item 1(a) or 2(a)), (at any other location where these documents are available for examination), and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, N-4677, Pension and Welfare Benefit Programs, Frances Perkins Department of Labor Building, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (Public Disclosure Room, N5507, Pension and Welfare Benefit Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210).

Note. Inapplicable portions of this notice may be omitted.

(Amended on July 20, 1982, by 47 FR 31871.)

(c) When to furnish. Except as otherwise provided in this paragraph (c) of this Section, the summary annual report required by subparagraph (a) of this Section, and Form 5500 R or the notice of its availability on request required under paragraph (b) of this Section, shall be furnished in accordance with the respective requirements of those subparagraphs within nine months after the close of the plan year.

(1) In the case of a welfare plan described in section 2520.10443 of this part, such furnishing shall take place within 9 months after the close of the fiscal year of the trust or other entity which files the annual report under section 2520.104a of this part.

(2) When an extension of time in which to file an annual report has been granted by the Internal Revenue Service, such furnishing shall take place within 2 months after the close of the period for which the extension was granted.

(Amended on July 20, 1982, by 47 FR 31871.)

(d) Contents, style and format. Except as otherwise provided in this paragraph (d), the summary annual report furnished to participants and beneficiaries of an employee pension benefit plan pursuant to this Section shall consist of a completed copy of the form prescribed in subparagraph (3) of this paragraph (d), and the summary annual report furnished to participants and beneficiaries of an employee welfare benefit plan pursuant to this Section shall consist of a completed copy of the form prescribed in subparagraph (4) of this paragraph (d). The information used to complete the form shall be based upon information contained in the most recent annual report of the plan which is required to be filed in accordance with Section 104(a)(1) of the Act.

(1) Any portion of the forms set forth in this paragraph (d) which is not applicable to the plan to which the summary annual report relates, or which would require information which is not required to be reported on the annual report of that plan, may be omitted.

(2) Where the plan administrator determines that additional explanation of any information furnished pursuant to this paragraph (d) is necessary to fairly summarize the annual report, such explanation shall be set forth following the completed form required by this paragraph (d) and shall be headed, "Additional Explanation."

(3) Form for Summary Annual Report Relating to Pension Plans.

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### Summary Annual Report for (name of plan)

This is a summary of the annual report for (name of plan and EIN) for (period covered by this report). The annual report has been filed with the Internal Revenue Service, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

### Basic Financial Statement

Benefits under the plan are provided by (indicate funding arrangements). Plan expenses were (\$ ). These expenses included (\$ ) in administrative expenses and (\$ ) in benefits paid to participants and beneficiaries, and (\$ ) in other expenses. A total of ( ) persons were participants in or beneficiaries of the plan at the end of the plan year, although not all of these persons had yet earned the right to receive benefits.

(If the plan is funded other than solely by allocated insurance contracts:)

The value of plan assets, after subtracting liabilities of the plan, was (\$ ) as of (the end of the plan year), compared to (\$ ) as of (the beginning of the plan year). During the plan year the plan experienced an (increase) (decrease) in its net assets of (\$ ). This (increase) (decrease) includes unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year. The plan had total income of (\$ ), including employer contributions of (\$ ), employee contributions of (\$ ), (gains) (losses) of (\$ ), from the sale of assets, and earnings from investments of (\$ ). (For plans filing form 5500K, omit separate entries for employer contributions and employee contributions and insert instead "contributions by the employer and employees of (\$)").

(If any funds are used to purchase allocated insurance contracts:)

The plan has (a) contract(s) with (name of insurance carrier(s)) which allocate(s) funds toward (state whether individual policies, group deferred annuities or other). The total premiums paid for the plan year ending (date) were (\$ ).

(Officially corrected May 31, 1979, and published in the Federal Register of June 1, 1979 (44 FR 31640).)

### Minimum Funding Standards

(If the plan is a defined benefit plan:)

An actuary's statement shows that (enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA) (not enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA. The amount of the deficit was \$ ).

(If the plan is a defined contribution plan covered by funding requirements:)

(Enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA) (Not enough money was contributed to the plan to keep it funded in accordance with the minimum funding standards of ERISA. The amount of the deficit was \$ ).

### Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report: (Note: list only those items which are actually included in the latest annual report)

1. an accountant's report;

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2. assets held for investment;
3. fiduciary information, including transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
4. loans or other obligations in default;
5. leases in default;
6. transactions in excess of 3 (5) percent of plan assets;
7. insurance information including sales commissions paid by insurance carriers; and
8. actuarial information regarding the funding of the plan.

To obtain a copy of the full annual report, or any part thereof, write or call the office of (name), who is (state Title: e.g., the plan administrator), (business address and telephone number). The charge to cover copying costs will be (\$ ) for the full annual report, or (\$ ) per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator, these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan (address ), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, D.C., or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to: Public Disclosure Room, N4677 Pension and Welfare Benefit Programs, Department of Labor, 200 Constitution Avenue, N.W. Washington, D.C. 20216 (Public Disclosure Room, N5507, Pension and Welfare Benefit Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210).

(4) Form for Summary Annual Report Relating to Welfare Plans

Summary Annual Report for (name of plan)

This is a summary of the annual report of the (name of plan, EIN and type of welfare plan) for (period covered by this report). The annual report has been filed with the Internal Revenue Service, as required under the Employee Retirement Income Security Act of 1974 (ERISA).

(If any benefits under the plan are provided on an uninsured basis:)

(Name of sponsor) has committed itself to pay (all, certain) (state type of) claims incurred under the terms of the plan.

(If any of the funds are used to purchase insurance contracts:)

Insurance Information

The plan has (a) contract(s) with (name of insurance carrier(s) to pay (all,

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certain) (state type of) claims incurred under the terms of the plan. The total premiums paid for the plan year ending ( date ) were ( \$ ).  
(If applicable add:)

Because (it is a) (they are) so called "experience-rated" contract(s), the premium costs are affected by, among other things, the number and size of claims. Of the total insurance premiums paid for the plan year ending (date), the premiums paid under such "experience-rated" contract(s) were ( \$ ) and the total of all benefit claims paid under the(se) experience-rated contract(s) during the plan year was ( \$ ).

(If any funds of the plan are held in trust or in a separately maintained fund:)

Basic Financial Statement

The value of plan assets, after subtracting liabilities of the plan, was ( \$ ) as of (the end of plan year), compared to ( \$ ) as of (the beginning of the plan year). During the plan year the plan experienced an (increase) (decrease) in its net assets of ( \$ ). This (increase) (decrease) includes unrealized appreciation or depreciation in the value of plan assets; that is, the difference between the value of the plan's assets at the end of the year and the value of the assets at the beginning of the year or the cost of assets acquired during the year. During the plan year, the plan had total income of ( \$ ) including employer contributions of ( \$ ), employee contributions of ( \$ ), realized (gains) (losses) of ( \$ ) from the sale of assets, and earnings from investments of ( \$ ).

Plan expenses were ( \$ ). These expenses included ( \$ ) in administrative expenses, ( \$ ) in benefits paid to participants and beneficiaries, -and ( \$ ) in other expenses.

(Officially corrected on May 31, 1979, and published in the Federal Register of June 1, 1979 (44 FR 31640).)

Your Rights to Additional Information

You have the right to receive a copy of the full annual report, or any part thereof, on request. The items listed below are included in that report: (Note: list only those items which are actually included in the latest annual report)

1. An accountant's report;
2. Assets held for investment;
3. Fiduciary information, including transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
4. Loans or other obligations in default;
5. Leases in default;
6. Transactions in excess of 3 (5) percent of plan assets; and
7. Insurance information including sales commissions paid by insurance carriers.

To obtain a copy of the full annual report, or any part thereof, write or call the office of (name), who is (state Title: e.g., the plan administrator), (business address and telephone number). The charge to cover copying costs will be ( \$ ) for the full annual report, or ( \$ ) per page for any part thereof.

You also have the right to receive from the plan administrator, on request and at no charge, a statement of the assets and liabilities of the plan and accompanying notes, or a statement of income and expenses of the plan and accompanying notes, or both. If you request a copy of the full annual report from the plan administrator,

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these two statements and accompanying notes will be included as part of that report. The charge to cover copying costs given above does not include a charge for the copying of these portions of the report because these portions are furnished without charge.

You also have the legally protected right to examine the annual report at the main office of the plan (address), (at any other location where the report is available for examination), and at the U.S. Department of Labor in Washington, D.C. or to obtain a copy from the U.S. Department of Labor upon payment of copying costs. Requests to the Department should be addressed to Public Disclosure Room, N4677, Pension and Welfare Benefit Programs, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20216 (Public Disclosure Room, N5507, Pension and Welfare Benefit Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210).

(e) Foreign languages. In the case of either

(1) A plan which covers fewer than 100 participants at the beginning of a plan year in which 25 percent or more of all plan participants are literate only in the same non-English language; or

(2) A plan which covers 100 or more participants in which 500 or more participants or 10 percent or more of all plan participants, whichever is less, are literate only in the same non-English language.

The plan administrator for such plan shall provide these participants with an English-language summary annual report which prominently displays a notice, in the non-English language common to these participants, offering them assistance. The assistance provided need not involve written materials, but shall be given in the non-English language common to these participants. The notice offering assistance shall clearly set forth any procedures participants must follow to obtain such assistance. Plans furnishing an explanatory notice accompanying Form 5500-R pursuant to subparagraph (b)(1) of this section or the notice of the availability of the Form 5500 R pursuant to subparagraph (b)(2) of this section shall also provide a notice in such non-English language offering such assistance.

(Amended on July 20, 1982, by 47 FR 31871.)

(f) Furnishing of additional documents to participants and beneficiaries. A plan administrator shall promptly comply with any request by a participant or beneficiary for additional documents made in accordance with the procedures or rights described in paragraphs (b)(3) and (d) of this section. Communications from plan participants or beneficiaries which might reasonably be construed as requests for information which is required to be supplied without charge shall be so construed. Any charges assessed to cover the cost of furnishing copies of the full annual report, or any part thereof, shall be determined in accordance with 20 CFR 2520.104b-30. Such charges shall not include the cost of furnishing, either separately or as part of the full annual report, copies of statements of assets and liabilities and of income and expenses, and accompanying notes.

(Amended on July 20, 1982, by 47 FR 31871.)

(g) Exemptions. Notwithstanding the provisions of this section, a summary annual report is not required to be furnished with respect to the following:

(1) A totally unfunded welfare plan described in 29 CFR 2520.104-44(b)(1)(i);

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- (2) a welfare plan which meets the requirements of 29 CFR 2520.104-20(b);
- (3) an apprenticeship or other training plan which meets the requirements of 29 CFR 2520.104-22;
- (4) a pension plan for selected employees which meets the requirements of 29 CFR 2520.104-23;
- (5) a welfare plan for selected employees which meets the requirements of 29 CFR 2520.104-24,
- (6) a day care center referred to in 29 CFR 2520.104-25;
- (7) a dues financed welfare plan which meets the requirements of 29 CFR 2520.104-26; and
- (8) a dues financed pension plan which meets the requirements of 29 CFR 2520.104-27.

(Added by 44 FR 19400, effective June 5, 1979.)

APPENDIX THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA  
(A Cross-Reference to the Annual Report)

A. Pension Plans

SAR item	Form 5500 line items	Form 5500 C line items
1. Funding arrangement	11 & 12	11 & 12.
2. Total plan expenses	35h	31j.
3. Administrative expenses	35g colt b	31h.
4. Benefits paid	35e(iii) colt b	31g(ii) colt b.
5. Other expenses	35f	31i.
6. Total participants	7(f)	7(a)(ii).
7. Value of plan assets (net):		
a. End of plan year	35l	30k colt b.
b. Beginning of plan year	35k	30k colt a.
8. Change in net assets	35l minus 35k	30k colt b minus
col a.		
9. Total income	35d	31f.
a. Employer contributions	35a(i)(A) & 35a(i)) if	31a(j) &
31(b) if	applicable	applicable.
b. Employee contributions	35a(i)(B) & 35a(i)) if	31a(i)) & 31b
if	applicable	applicable.
c. Gains (losses) from sale of assets	35b(iv) colt b	31d.

d. Earnings from investments	ERISA Section B 35b(i)G colt b, 35b(ii)B colt b, 35b(iii), 35b(v),	31c.
& 35b(vi)		
10. Total insurance premiums Schs. A, Part II	35e(ii) or total of Schs. A Part II, item 5(b)	Total of Item 5(b).
11. Funding deficiency:		
a. Defined benefit plans.....	Sch. B, item 9m or 10h	Sch.
B, item 9m or 10h		
b. Defined contribution plans .....	15b(iii)	15b
(iii)		

B. Welfare Plans

SAR item	Form 5500 line items	Form 5500-C line items
1. Name of insurance carrier.....		All Schs. A. Part I. Item
All Schs. A Part I. item		
2. Total insurance premiums	2a	2a.
Part III,	All Schs. A, Part III,	All Schs. A,
3. Experience-rate premiums	total of item 8c	total of item 8c.
III	All Schs. A, Part III,	All Schs. A part
4. Experience-rate claims	item 9a(iv)	item 9a(iv).
part III	All Schs. A, Part III,	All Schs. A
5. Value of plan assets (net):	item 9b(iv)	item 9b(iv).
a. End of plan year	351	30k colt b.
b. Beginning of plan year	35k	30k colt a.
6. Change in net assets	351 minus 35k	30k colt b minus
colt a.		
7. Total income	35d	31f.
a. Employer contributions	35a(i)(A) & 35a(i))	if 31a(i) & 31b
if	applicable	applicable.
b. Employee contributions	35a(i)(B) & 35a(i))	if 31a(i)) & 31b if
c. Gains (losses) from sale of assets	applicable	applicable.
d. Earnings from investments	35b(iv) colt b	31d.
	35b(i)G colt b,	35b(ii)(B) 31c.
	colt b, 35b(iii),	35b(v),
	& 35b(vi)	
8. Total plan expenses	35h	31j.
9. Administrative expenses	35gcol.b	31h.
10. Benefits paid	35e(iii) colt b	3 1g(ii) colt b.

(44 FR 19403, April 3, 1979, as amended by 44 FR 31640, June 1, 1979, by 47 FR 31871 on July 20, 1982 and by 54 FR 8624 on March I, 1989.)

Temporary and Proposed Regulations

The temporary and proposed Reg. Section 2520.104b-12 was filed with the Federal Register on February 9, 1977, and published in the Federal Register on February 11, 1977. It is effective upon publication in the Federal Register.

TITLE 29 LABOR CHAPTER XXV  
PENSION AND WELFARE BENEFIT  
PROGRAMS DEPARTMENT OF LABOR

PART 252-RULES AND  
REGULATIONS FOR REPORTING AND  
DISCLOSURE

## ERISA Section B

### Summary Annual Report for 1975 Plan Year Optional Method of Disclosure for Certain Multi-employer Plans

The new Section 2520.104b-12 contained in this regulation provides an optional method of distribution of the first summary annual report for those multi-employer pension and welfare plans whose record keeping systems do not yet contain a complete list of participants covered under the plan (See 29 CFR 2510.3-3(d)). Because the earliest date for distribution of the summary annual report, February 15, 1977 (Section 2520.104b-10(b), 41 F.R. 32537, and Section 2520.104b-11(a), 41 F.R. 32538, August 3, 1976), is rapidly approaching, such plans must be afforded relief from the provisions of 29 CFR 2520.104b-1, which they otherwise could not meet.

Section 2520.104b-12 provides multi-employer plans lacking records of covered participants with optional methods of distribution to participants covered under the plan which parallel those provided for the ERISA Notice under Section 2520.104b-5(d). The administrator may satisfy the requirement to furnish a copy of the summary annual report to participants covered under the welfare or pension plan by using methods such as supplying participating employers or employee organizations with copies to be furnished to employees or members who are participants, or by publishing the summary annual report in a periodical the circulation of which includes participants. Such special methods of distribution should not be necessary for participants and beneficiaries receiving benefits under a pension plan because a complete mailing list should be available for such persons. Subparagraph (c)(2) therefore makes it clear that the option provided by this Section does not apply to the requirement of Section 2520.104b-1 to furnish a copy of the summary annual report to participants and beneficiaries receiving benefits under a pension plan (beneficiaries receiving benefits under a welfare plan are not required to be furnished a copy of the summary annual report under Section 2520.104b-1).

It is recognized that because of the publication date of this regulation, some plan administrators will not be able to take the measures described in paragraph (b) of Section 2520.104b-12 prior to the February 15, 1977 date. In such cases the plan administrator should make a good faith effort to meet the requirements of the regulation as soon as possible. If in light of all the facts and circumstances a good faith effort has been made, the Department will take no action if disclosure has not been made by February 15. In most cases, the plan administrator should be able to complete the measures described in paragraph (b) within 30 days of the February 15 disclosure date.

This Section has not previously been proposed and is promulgated as a temporarily effective rule under the authority of 5 U.S.C. Section 553(a)(3)(B) of the Administrative Procedure Act, which permits an agency for good cause to issue a final rule without notice and opportunity for comment if "notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." Pursuant to the requirement of 5 U.S.C. Section 553(a)(3)(B), a brief statement of reasons supporting a finding of good cause by an agency must accompany the issuance of a final rule without public notice and comment under this Section. The following findings are made pursuant to 5 U.S.C. Section 553(a)(3)(B):

Issuance of a proposal to establish these optional methods of distribution of the summary annual report would be impracticable because the problem of the inadequacy of certain multi-employer plan records has only recently been brought to the attention of the Department, and the time remaining before the February 15, 1977 date is inadequate to undertake and complete the process of notice and public procedure.

However, because many plans will have disclosure dates under Sections 2520.104b-10(b) and 2520.104b-11(a) which are well after February 15, 1977, Section 2520.104b-12 is also a proposed regulation for final adoption. Interested persons are invited to submit written data, views, or arguments concerning the regulation contained in this document on or before March 7, 1977. Such data, views, and

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arguments should be submitted to the Office of Regulatory Standards and Exceptions, Pension and Welfare Benefits Programs, U.S. Department of Labor, Washington, D.C. 20216, Attn: ME/ SAR.

Accordingly, Chapter XXV of Title 29 of the Code of Federal Regulations is amended by adding a new Section 2520.104b-12 to read as follows:

Subpart A - General Reporting and Disclosure Requirements

Section 2520.104b-12 Summary Annual Report for 1975 Plan Year Optional Method of Distribution for Certain Multi-employer Plans.

Authority: Sections 101, 104, and 505, Pub. L. 93-406, 88 Stat. 847, 849, 894 (29 U.S.C. 1021, 1024, 1135); Secretary of Labor's Order No. 13-76.

Subpart A - General Reporting and Disclosure Requirements

Section 2520.104b-12. Summary Annual Report for 1975 Plan Year Optional Method of Distribution for Certain Multi-employer Plans.

(a) In the case of a multi-employer plan which

(1) is required to disclose a summary annual report to its participants and beneficiaries under Section 104(b)(3) of the Act and Section 2520.104b-10 or Section 2520.104b-11, and

(2) does not, as of the date for disclosure of the summary annual report described in those sections, maintain complete records of participants covered under the plan, the administrator of such plan will be deemed to have used methods reasonably calculated to ensure timely receipt of the summary annual report by participants covered under the plan, as required by Section 2520.104b-1 (relating to methods of disclosure), if the administrator meets the requirements of paragraph (b).

(b) No later than the dates set forth in Section 2520.104b-10(b) or Section 2520.104b-11(a), as appropriate, the administrator shall take measures to furnish copies of the summary annual report to substantially all individuals who, as of the date of such disclosure, are participants covered under the plan who can be identified. These measures may include the following.

(1) The administrator may deliver copies of the summary annual report to employers whose employees are participants covered under the plan, or employee organizations whose members are participants covered under the plan, or to both, in sufficient quantity and sufficiently in advance of the date by which disclosure must be made to enable such employers or employee organizations to furnish them by that date to employees or members who are participants covered under the plan. The administrator shall take whatever steps are necessary and feasible under the circumstances to ensure that employers or employee organizations actually perform those duties. For example, an administrator secures written commitments from appropriate employers and employee organizations that they will furnish copies of the summary annual report to identifiable participants covered under the plan who are in their workforce or membership; or

(2) The administrator may publish the summary annual report, on or before the date by which disclosure must be made, in a periodical or periodicals, the circulation of which includes participants covered under the plan.

(c) Limitations.

(1) This Section applies to only the summary annual report required to be disclosed for the plan year which began in 1975.

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(2) This Section does not exempt an administrator from the requirement of Section 2520.104b-1 to furnish copies of the summary annual report to participants and beneficiaries receiving benefits under a pension plan.

### Section 2520.104b-30 Charges for documents. -

(a) Application. The plan administrator of an employee benefit plan may impose a reasonable charge to cover the cost of furnishing to participants and beneficiaries upon their written request as required under Section 104(b)(4) of the Act, copies of the following information, statements or documents: the latest updated summary plan description, plan description, and the latest annual report, any terminal report, the bargaining agreement, trust agreement, contract, or other instruments under which the plan is established or operated. No charge may be assessed for furnishing information, statements or documents as required by other provisions of the Act, which include, in Part 1 of Title I, sections 104(b)(1), (2), (3) and (c) and 105(a) and (c).

(b) Reasonableness. The charge assessed by the plan administrator to cover the costs of furnishing documents is reasonable if it is equal to the actual cost per page to the plan for the least expensive means of acceptable reproduction, but in no event may such charge exceed 25 cents per page. For example, if a plan printed a large number of pamphlets at \$1.00 per 50-page pamphlet, the actual cost of reproduction for the entire pamphlet (\$1.00) would be equal to 2 cents per page. If only one page of such a pamphlet were requested, the actual cost of providing that page from the printed copy would be \$1.00, since the copy would no longer be complete. In such a case, the least expensive means of acceptable reproduction would be individually reproducing the page requested at a charge of no more than 25 cents. On the other hand, if six pages of the same plan document were requested and each page cost 20 cents to be reproduced, the actual cost of providing those pages would be \$1.20. In such a case, if a printed copy is available, the least expensive means of acceptable reproduction would be to use pages from the printed copy at a charge of no more than \$1.00. No other charge for furnishing documents, such as handling or postage charges, will be deemed reasonable. The plan administrator shall provide information to a plan participant or beneficiary, upon request, about the charge that would be made to provide a copy of material described in this paragraph. (Added by 41 FR 16957, effective April 23, 1976.)

### REPORTING OF PARTICIPANT'S BENEFIT RIGHTS Act Sec. 105.

(a) Each administrator of an employee pension benefit plan shall furnish to any plan participant or beneficiary who so requests in writing, a statement indicating, on the basis of the latest available information

(1) the total benefits accrued, and

(2) the non-forfeitable pension benefits, if any, which have accrued, or the earliest date on which benefits will become nonforfeitable.

(b) In no case shall a participant or beneficiary be entitled under this Section to receive more than one report described in Subsection (a) during any one 12-month period.

(c) Each administrator required to register under Section 6057 of the Internal Revenue Code of 1986 shall, before the expiration of the time prescribed for such registration, furnish to each participant described in Subsection (a)(2)(C) of such section, an individual statement setting forth the information with respect to such participant required to be contained in the registration statement required by

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Section 6057(a)(2) of such Code. Such statement shall also include a notice to the participant of any benefits which are forfeitable if the participant dies before a certain date.

(d) Subsection (a) of this section shall apply to a plan to which more than one unaffiliated employer is required to contribute only to the extent provided in regulations prescribed by the Secretary in coordination with the Secretary of the Treasury.

Amendments

P.L. 101-239, Section 7891(a)(I):

Titles I, III, and IV of ERISA (other than sections 3(37)(E), 301(a)(7), and 308, the last sentence of section 408(d), and sections 414(c), 4001, and 4303) are each amended by striking Internal Revenue Code of 1954, each place it appears and inserting internal Revenue Code of 1986," effective October 22, 1986.

P.L. 101-239, Section 7894(b)(6):

Amended ERISA Sec. 105(b) by striking "6 month," and inserting "12-month," effective September 2, 1974.

P.L. 98-397, Section 106

Act Sec. 106 amended ERISA Sec. 105(c) by adding the last sentence at the end thereof.

The above amendment applies to plan years beginning after December 31, 1984.

However, Act Sec. 302(b) provides:

(b) Special Rule for Collective Bargaining Agreements. In the case of a plan maintained pursuant to 1 or more collective bargaining agreements between employee representatives and 1 or more employers ratified before the date of enactment of this Act, except as provided in subsection (d) or Section 303, the amendments made by this Act shall not apply to plan years beginning before the earlier official the date on which the last of the collective bargaining agreements relating to the plan terminates (determined without regard to any extension thereof agreed to after the date of the enactment of this Act), or January 1, 1987.

For purposes of paragraph (1), any plan amendment made pursuant to a collective bargaining agreement relating to the plan which amends the plan solely to conform to any requirement added by Title I or II shall not be treated as a termination of such collective bargaining agreement.

.09 Committee Report on P.L. 98-397.

(Senate Committee Report)

Under the bill, any statement provided to a plan participant of total accrued benefits and non-forfeitable accrued benefits, or any statement provided to a separated plan participant who has a vested deferred benefit, must include a notice to the participant that certain benefits may be forfeited if the participant dies before a particular date. The notice that certain benefits may be forfeited if a participant dies before a particular date need not include the amount of the benefits that are forfeitable.

REPORTS MADE PUBLIC INFORMATION

Act Sec. 106.

(a) Except as provided in subsection (b), the contents of the descriptions, annual reports, statements, and other documents filed with the Secretary pursuant to this part shall be public information and the Secretary shall make any such information and data available for inspection in the public document room of the Department of Labor. The Secretary may use the information and data for statistical and research purposes, and compile and publish such studies, analyses, reports, and surveys based thereon as he may deem appropriate.

(b) Information described in sections 105(a) and 105(c) with respect to a participant may be disclosed only to the extent that information respecting that participant's benefits under Title II of the Social Security Act may be disclosed

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under such Act.

Amendment

P.L. 101-239, Section 7894(106):

Amended ERISA Sec. 106(b) by striking "Section" and inserting sections effective September 2, 1974.

.10 Conference Committee Explanation (P.L. 93-406). Reports made public information. The contents of the description of plans and reports filed with the Secretary of Labor are to be public information and are to be available for inspection in the Department of Labor. In addition, the Secretary of Labor may use the information and data for statistical and research purposes and for the compiling and publishing of studies as he may deem appropriate. However, information with respect to a plan participant's accrued benefits and non-forfeitable pension rights is to be disclosed only to the extent that information respecting a participant's benefits for old age retirement insurance may be disclosed under the Social Security Act.

RETENTION OF RECORDS

Act Sec. 107.

Every person subject to a requirement to file any description or report or to certify any information therefor under this Title or who would be subject to such a requirement but for an exemption or simplified reporting requirement under Section 104(a)(2) or (3) of this Title shall maintain records on the matters of which disclosure is required which will provide in sufficient detail the necessary basic information and data from which the documents thus required may be verified, explained, or clarified, and checked for accuracy and completeness, and shall include vouchers, worksheets, receipts, and applicable resolutions, and shall keep such records available for examination for a period of not less than six years after the filing date of the documents based on the information which they contain, or six years after the date on which such documents would have been filed but for an exemption or simplified reporting requirement under Section 104(a)(2) or (3).

.10 See Committee Reports at 114,220.10, 14,230.10, and 14,240.10.

RELIANCE ON ADMINISTRATIVE INTERPRETATIONS

Act Sec. 108.

In any criminal proceeding under Section 501 based on any act or omission in alleged violation of this part or Section 412, no person shall be subject to any liability or punishment for or on account of the failure of such person to

(1) comply with this part or Section 412, if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any regulation or written ruling of the Secretary, or

(2) publish and file any information required by any provision of this part if he pleads and proves that he published and filed such information in good faith, and in conformity with any regulation or written ruling of the Secretary issued under this part regarding the filing of such reports. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that

(A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or

(B) after publishing or filing the plan description, annual reports, and other reports required by this Title, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this part.

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### Amendment

P.L. 101-239, Section 7894:

Amended ERISA Sec. 108 by striking "Act of omission" and inserting "act or omission" effective September 2, 1974.

### .10 House Education and Labor Committee

Report (P.L. 93-406). Proven reliance upon a regulation or interpretation by the Secretary of Labor would constitute a defense in a criminal or civil proceeding under certain sections of the Act.

### FORMS

Act Sec. 109.

(a) Except as provided in subsection (b) of this section, the Secretary may require that any information required under this Title to be submitted to him, including but not limited to the information required to be filed by the administrator pursuant to Section 103(b)(3) and (c), must be submitted on such forms as he may prescribe.

(b) The financial statement and opinion required to be prepared by an independent qualified public accountant pursuant to Section 103(a)(3)(A), the actuarial statement required to be prepared by an enrolled actuary pursuant to Section 103(a)(4)(A) and the summary plan description required by Section 102(a) shall not be required to be submitted on forms.

(c) The Secretary may prescribe the format and content of the summary plan description, the summary of the annual report described in Section 104(b)(3) and any other report, statements or documents (other than the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated), which are required to be furnished or made available to plan participants and beneficiaries receiving benefits under the plan.

.10 Conference Committee Explanation (P.L. 93406). Forms to be provided. The Secretary of Labor may require that any information required to be filed with the Labor Department, including statements and schedules attached to the annual report, must be submitted on forms that he may prescribe. The financial statement prepared by the independent qualified accountant and the actuarial statement prepared by the enrolled actuary and the summary of the plan description are not required to be submitted on forms. However, the Secretary may prescribe the format and content of the accountant's and actuary's statements and of the summary plan description, the summary annual report, and other statements or reports required under Title I to be furnished or made available to participants and beneficiaries.

The two Secretaries (Labor and Treasury) are to unify, to the extent feasible, the reports made to them and it is expected that all of the material subject to the form authority of either Secretary, comprising the annual reports to be made by a plan, can and should be reported on a single form.

### ALTERNATIVE METHODS OF COMPLIANCE

Act Sec. 110.

(a) The Secretary on his own motion or after having received the petition of an administrator may prescribe an alternative method for satisfying any requirement of this part with respect to any pension plan, or class of pension plans, subject to such requirement if he determines

(1) that the use of such alternative method is consistent with the purposes of this Title and that it provides adequate disclosure to the participants and beneficiaries in the plan, and adequate reporting to the Secretary.

(2) that the application of such requirement of this part would

(A) increase the costs to the plan, or

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(B) impose unreasonable administrative burdens with respect to the operation of the plan, having regard to the particular characteristics of the plan or the type of plan involved; and

(3) that the application of this part would be adverse to the interests of plan participants in the aggregate.

(b) An alternative method may be prescribed under subsection (a) by regulation or otherwise. If an alternative method is prescribed other than by regulation, the Secretary shall provide notice and an opportunity for interested persons to present their views, and shall publish in the Federal Register the provisions of such alternative method.

.10 See Committee Report at paragraph 14,210. 10.

REPEAL AND EFFECTIVE DATE

(a) (1) The Welfare and Pension Plans Disclosure Act is repealed except that such Act shall continue to apply to any conduct and events which occurred before the effective date of this part.

(2) (A) Section 664 of Title 18, United States Code, is amended by striking out "any such plan subject to the provisions of the welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "any employee benefit plan subject to any provision of Title I of the Employee Retirement Income Security Act of 1974".

(B) (i) Section 1027 of such Title 18 is amended by striking out "welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Title I of the Employee Retirement Income Security Act of 1974", and by striking out "Act" each place it appears and inserting in lieu thereof "Title".

(ii) The heading for such Section is amended by striking out "WELFARE AND PENSION PLANS DISCLOSURE ACT" and inserting in lieu thereof "EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974".

(iii) The table of Sections of chapter 47 of such Title 18 is amended by striking out "Welfare and Pension Plans Disclosure Act" in the item relating to Section 1027 and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(C) Section 1954 of such Title 18 is amended by striking out "any plan subject to the provisions of the welfare and Pension Plans Disclosure Act as amended" and inserting in lieu thereof "any employee welfare benefit plan or employee pension benefit plan, respectively, subject to any provision of Title I of the Employee Retirement Income Security Act of 1974" and by striking out "Sections 3(3) and

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5(b)(1) and (2) of the Welfare and Pension Plans Disclosure Act, as amended" and inserting in lieu thereof "Sections 3(4) and (3)(16) of the Employee Retirement Income Security Act of 1974".

(D) Section 211 of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 441) is amended by striking out "Welfare and Pension Plans Disclosure Act" and inserting in lieu thereof "Employee Retirement Income Security Act of 1974".

(b) (1) Except as provided in paragraph (2), this part (including the amendments and repeals made by subsection (a)) shall take effect on January 1, 1975.

(2) In the case of a plan which has a plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary may postpone by regulation the effective date of the repeal of any provision of the Welfare and Pension Plans Disclosure Act (and of any amendment made by subsection (a)(2)) and the effective date of any provision of this part, until the beginning of the first plan year of such plan which begins after January 1, 1975.

(c) The provisions of this Title authorizing the Secretary to promulgate regulations shall take effect on the date of enactment of this Act.

(d) Subsections (b) and (c) shall not apply with respect to amendments made to this part in provisions enacted after the date of the enactment of this Act.

Amendment

P.L.101-239, Section 7894(h)(1):

Amended ERISA Sec. 111 by adding new subsection (d) to read as above effective September 2, 1974.

.10 Conference Committee Explanation (P.L. 93-406). Effective dates. The conference agreement provides that the reporting and disclosure provisions generally are to take effect on January 1, 1975. However, in the case of a fiscal year plan year which begins before January 1, 1975, and ends after December 31, 1974, the Secretary of Labor may by regulation postpone the effective date until the beginning of the first plan year of the plan which begins after January 1, 1975.

Section 2509.75-9 Independence of Accountant Retained by Employee Benefit Plan. The Department of Labor today announced guidelines for determining when a qualified public accountant is independent for purposes of auditing and rendering an opinion on the financial information required to be included in the annual report filed with the Department.

Section 103(a)(3)(A) requires that the accountant retained by an employee benefit plan be "independent" for purposes of examining plan financial information and rendering an opinion on the financial statements and schedules required to be contained in the annual report.

Under the authority of Section 103(a)(3)(A) the Department of Labor will not recognize any person as an independent qualified public accountant who is in fact not independent with respect to the employee benefit plan upon which that accountant renders an opinion in the annual report filed with the Department of Labor. For example, an accountant will not be considered independent with respect to a plan if:

(1) During the period of professional engagement to examine the financial

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statements being reported, at the date of the opinion, or during the period covered by the financial statements, the accountant or his or her firm or a member thereof had, or was committed to acquire, any direct financial interest or any material indirect financial interest in such plan, or the plan sponsor, as that term is defined in Section 3(16)(B) of the Act.

(2) During the period of professional engagement to examine the financial statements being reported, at the date of the opinion, or during the period covered by the financial statements, the accountant, his or her firm or a member thereof was connected as a promoter, underwriter, investment advisor, voting trustee, director, officer, or employee of the plan or plan sponsor except that a firm will not be deemed not independent in regard to a particular plan if a former officer or employee of such plan or plan sponsor is employed by the firm and such individual has completely disassociated himself from the plan or plan sponsor and does not participate in auditing financial statements of the plan covering any period of his or her employment by the plan or plan sponsor. For the purpose of this bulletin the term "member" means all partners or shareholder employees in the firm and all professional employees participation in the audit or located in an office of the firm participating in a significant portion of the audit;

(3) An accountant or a member of an accounting firm maintains financial records for the employee benefit plan.

However, an independent qualified public accountant may permissibly engage in or have members of his or her firm engage in certain activities which will not have the effect of removing recognition of his or her independence.

For example, (1) an accountant will not fail to be recognized as independent if at or during the period of his or her professional engagement with the employee benefit plan the accountant or his or her firm is retained or engaged on a professional basis by the plan sponsor, as that term is defined in Section 3(16)(B) of the Act. However, to retain recognition of independence under such circumstances the accountant must not violate the prohibitions against recognition of independence established under paragraphs (1), (2) or (3) of this interpretive bulletin: (2) the rendering of services by an actuary associated with an accountant or accounting firm shall not impair the accountant's or accounting firm's independence. However, it should be noted that the rendering of services to a plan by an actuary and accountant employed by the same firm may constitute a prohibited transaction under Section 406(a)(1)(C) of the Act. The rendering of such multiple services to a plan by a firm will be the subject of a later interpretive bulletin that will be issued by the Department of Labor.

In determining whether an accountant or accounting firm is not, in fact, independent with respect to a particular plan, the Department of Labor will give appropriate consideration to all relevant circumstances, including evidence bearing on all relationships between the accountant or accounting firm and that of the plan sponsor or any affiliate thereof, and will not confine itself to the relationships existing in connection with the filing of annual reports with the Department of Labor.

Further interpretive bulletins may be issued by the Department of Labor concerning the question of independence of an accountant retained by an employee benefit plan. (Amended by 40 FR 59728, filed with the Federal Register December 29, 1975, and published in the Federal Register December 30, 1975.)