

SUBCHAPTER C—REPORTING AND DISCLOSURE UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974

PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

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1181-1183, 1181 note, 1185, 1185a-b, 1191, and 1191a-c. Secs. 2520.104b-1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101-5 also issued under sec. 501 of Pub. L. 109-280, 120 Stat. 780, and sec. 105(a), Pub. L. 110-458, 122 Stat. 5092.

Subpart A—General Reporting and Disclosure Requirements

§ 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.

(Approved by the Office of Management and Budget under control number 1210-0016)

[41 FR 16962, Apr. 23, 1976, as amended at 46 FR 62845, Dec. 29, 1981]

§ 2520.101-2 Filing by multiple employer welfare arrangements and certain other related entities.

(a) *Basis and scope.* Section 101(g) of the Employee Retirement Income Security Act (ERISA), as amended by the Patient Protection and Affordable Care Act, requires the Secretary of Labor (the Secretary) to establish, by regulation, a requirement that multiple employer welfare arrangements (MEWAs) providing benefits that consist of medical care (as described in paragraph (b)(6) of this section), which are not group health plans, to register with the Secretary prior to operating in a State. Section 101(g) also permits the Secretary to require, by regulation, such MEWAs to report, not more frequently than annually, in such form and manner as the Secretary may require, for the purpose of determining the extent to which the requirements of part 7 of subtitle B of title I of ERISA (part 7) are being carried out in connection with such benefits. Section 734 of ERISA provides that the Secretary may promulgate such regulations as may be necessary or appropriate to carry out the provisions of part 7. This section sets out requirements for reporting by MEWAs that provide benefits that consist of medical care and by certain entities that claim not to be a MEWA solely due to the exception in section 3(40)(A)(i) of ERISA (referred to

in this section as Entities Claiming Exception or ECEs). The reporting requirements apply regardless of whether the MEWA or ECE is a group health plan.

(b) *Definitions.* As used in this section, the following definitions apply:

(1) *Administrator* means—(i) The person specifically so designated by the terms of the instrument under which the MEWA or ECE is operated;

(ii) If the MEWA or ECE is a group health plan and the administrator is not so designated, the plan sponsor (as defined in section 3(16)(B) of ERISA); or

(iii) In the case of a MEWA or ECE for which an administrator is not designated and a plan sponsor cannot be identified, jointly and severally, the person or persons actually responsible (whether or not so designated under the terms of the instrument under which the MEWA or ECE is operated) for the control, disposition, or management of the cash or property received by or contributed to the MEWA or ECE, irrespective of whether such control, disposition, or management is exercised directly by such person or persons or indirectly through an agent, custodian, or trustee designated by such person or persons.

(2) *Entity Claiming Exception (ECE)* means an entity that claims it is not a MEWA on the basis that the entity is established or maintained pursuant to one or more agreements that the Secretary finds to be collective bargaining agreements within the meaning of section 3(40)(A)(i) of ERISA and § 2510.3-40.

(3) *Excepted benefits* means *excepted benefits* within the meaning of section 733(c) of ERISA and § 2590.701-2 of this chapter.

(4) *Group health plan* means a *group health plan* within the meaning of section 733(a) of ERISA and § 2590.701-2 of this chapter.

(5) *Health insurance issuer* means a *health insurance issuer* within the meaning of section 733(b)(2) of ERISA and § 2590.701-2 of this chapter.

(6) *Medical care* means *medical care* within the meaning of section 733(a)(2) of ERISA and § 2590.701-2 of this chapter.

(7) *Multiple employer welfare arrangement (MEWA)* means a *multiple employer*

welfare arrangement within the meaning of section 3(40) of ERISA.

(8) *Operating* means any activity including but not limited to marketing, soliciting, providing, or offering to provide benefits consisting of *medical care*.

(9) *Origination* means, with regard to an ECE, the occurrence of any of the following events (an ECE is considered to have been *originated* only when an event described below occurs)—

(i) The ECE begins operating with regard to the employees of two or more employers (including one or more self-employed individuals);

(ii) The ECE begins operating following a merger with another ECE (unless all of the ECEs that participate in the merger previously were last originated at least three years prior to the merger); or

(iii) The number of employees receiving coverage for medical care under the ECE is at least 50 percent greater than the number of such employees on the last day of the previous calendar year (unless the increase is due to a merger with another ECE under which all ECEs that participate in the merger were last originated at least three years prior to the merger).

(10) *Reporting or to report* means to file the Form M-1 as required pursuant to sections 101(g) of ERISA; § 2520.101-2; or the instructions to the Form M-1.

(11) *Special filing event* means, with regard to an ECE—

(i) The ECE begins knowingly operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(1)(i) or (f)(2)(i) of this section; or

(ii) The ECE experiences a material change as defined in the Form M-1 instructions.

(12) *State* means *State* within the meaning of § 2590.701-2 of this chapter.

(c) *Persons required to report*—(1) *General rule.* Except as provided in paragraph (c)(2) of this section, the following persons are required to report under this section:

(i) The administrator of a MEWA regardless of whether the entity is a group health plan; and

(ii) The administrator of an ECE during the three-year period following an event described in paragraph (b)(9) of this section.

(2) *Exceptions*—(i) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of a MEWA or ECE described under this paragraph (c)(2)(i).

(A) A MEWA or ECE licensed or authorized to operate as a health insurance issuer in every State in which it offers or provides coverage for medical care to employees;

(B) A MEWA or ECE that provides coverage that consists solely of excepted benefits, which are not subject to ERISA part 7. If the MEWA or ECE provides coverage that consists of both excepted benefits and other benefits for medical care that are not excepted benefits, the administrator of the MEWA or ECE is required to report under this section;

(C) A MEWA or ECE that is a group health plan not subject to ERISA, including a governmental plan, church plan, or a plan maintained solely for the purpose of complying with workmen's compensation laws, within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively; or

(D) A MEWA or ECE that provides coverage only through group health plans that are not covered by ERISA, including governmental plans, church plans, or plans maintained solely for the purpose of complying with workmen's compensation laws within the meaning of sections 4(b)(1), 4(b)(2), or 4(b)(3) of ERISA, respectively (or other arrangements not covered by ERISA, such as health insurance coverage offered to individuals other than in connection with a group health plan, known as individual market coverage).

(ii) Nothing in this paragraph (c) shall be construed to require reporting under this section by the administrator of an entity that would not constitute a MEWA or ECE *but for* the following circumstances under this paragraph (c)(2)(ii).

(A) The entity provides coverage to the employees of two or more trades or businesses that share a common control interest of at least 25 percent at any time during the plan year, applying principles similar to the principles of section 414(c) of the Internal Revenue Code;

(B) The entity provides coverage to the employees of two or more employ-

ers due to a change in control of businesses (such as a merger or acquisition) that occurs for a purpose other than avoiding Form M-1 filing and is temporary in nature. For purposes of this paragraph, "temporary" means the MEWA or ECE does not extend beyond the end of the plan year following the plan year in which the change in control occurs; or

(C) The entity provides coverage to persons (excluding spouses and dependents) who are not employees or former employees of the plan sponsor, such as non-employee members of the board of directors or independent contractors, and the number of such persons who are not employees or former employees does not exceed one percent of the total number of employees or former employees covered under the arrangement, determined as of the last day of the year to be reported or, determined as of the 60th day following the date the MEWA or ECE began operating in a manner such that a filing is required pursuant to paragraph (e)(1)(i), (2), or (3) of this section.

(3) *Examples.* The rules of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA A begins operating by offering coverage to the employees of two or more employers on August 1, 2013. MEWA A is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

(ii) *Conclusion.* In this *Example 1*, the administrator of MEWA A is not required to report via Form M-1. MEWA A meets the exception to the filing requirement in paragraph (c)(2)(i)(A) of this section because it is licensed or authorized to operate as a health insurance issuer in every State in which it offers coverage for medical care to employees.

Example 2. (i) *Facts.* Company B maintains a group health plan that provides benefits for medical care for its employees (and their dependents). Company B establishes a joint venture in which it has a 25 percent stock ownership interest, determined by applying the principles similar to the principles under section 414(c) of the Internal Revenue Code, and transfers some of its employees to the joint venture. Company B continues to cover these transferred employees under its group health plan.

(ii) *Conclusion.* In this *Example 2*, the administrator is not required to file the Form M-1 because Company B's group health plan

meets the exception to the filing requirement in paragraph (c)(2)(ii)(A) of this section. This is because Company *B*'s group health plan would not constitute a MEWA but for the fact that it provides coverage to two or more trades or businesses that share a common control interest of at least 25 percent.

Example 3. (i) *Facts.* Company *C* maintains a group health plan that provides benefits for medical care for its employees. The plan year of Company *C*'s group health plan is the fiscal year for Company *C*, which is October 1st—September 30th. Therefore, October 1, 2012—September 30, 2013 is the 2013 plan year. Company *C* decides to sell a portion of its business, Division *Z*, to Company *D*. Company *C* signs an agreement with Company *D* under which Division *Z* will be transferred to Company *D*, effective September 30, 2013. The change in control of Division *Z* therefore occurs on September 30, 2013. Under the terms of the agreement, Company *C* agrees to continue covering all of the employees that formerly worked for Division *Z* under its group health plan until Company *D* has established a new group health plan to cover these employees. Under the terms of the agreement, it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of Division *Z* occurred.

(ii) *Conclusion.* In this *Example 3*, the administrator of Company *C*'s group health plan is not required to report via the Form M-1 on March 1, 2014 for fiscal year 2013 because it is subject to the exception to the filing requirement in paragraph (c)(2)(ii)(B) of this section for an entity that would not constitute a MEWA but for the fact that it is created by a change in control of businesses that occurs for a purpose other than to avoid filing the Form M-1 and is temporary in nature. Under the exception, “temporary” means the MEWA does not extend beyond the end of the plan year following the plan year in which the change in control occurs. The administrator is not required to file the 2013 Form M-1 annual report because it is anticipated that Company *C* will not be required to cover the employees of Division *Z* under its group health plan beyond the end of the 2014 plan year, which is the plan year following the plan year in which the change in control of businesses occurred.

Example 4. (i) *Facts.* Company *E* maintains a group health plan that provides benefits for medical care for its employees (and their dependents) as well as certain independent contractors who are self-employed individuals. The plan is therefore a MEWA. The administrator of Company *E*'s group health plan uses calendar year data to report for purposes of the Form M-1. The administrator of Company *E*'s group health plan determines

that the number of independent contractors covered under the group health plan as of the last day of calendar year 2013 is less than one percent of the total number of employees and former employees covered under the plan determined as of the last day of calendar year 2013.

(ii) *Conclusion.* In this *Example 4*, the administrator of Company *E*'s group health plan is not required to report via the Form M-1 for calendar year 2013 (a filing that is otherwise due by March 1, 2014) because it is subject to the exception to the filing requirement provided in paragraph (c)(2)(ii)(C) of this section for entities that cover a very small number of persons who are not employees or former employees of the plan sponsor.

(d) *Information to be reported*—(1) Any reporting required by this section shall consist of a completed copy of the Form M-1 Report for Multiple Employer Welfare Arrangements (MEWAs) and Certain Entities Claiming Exception (ECEs) (Form M-1) and any additional statements required pursuant to the instructions for the Form M-1.

(2) *Rejected filings.*—The Secretary may reject any filing under this section if the Secretary determines that the filing is incomplete, in accordance with § 2560.502c-5 of this chapter.

(3) If the Secretary rejects a filing under paragraph (d)(2) of this section, and if a revised filing satisfactory to the Secretary is not submitted within 45 days after the notice of rejection, the Secretary may bring a civil action for such relief as may be appropriate (including penalties under section 502(c)(5) of ERISA and § 2560.502c-5 of this chapter).

(e) *Origination, registration, and other non-annual reporting requirements and timing*—(1) *General rule for ECEs*—(i) Except as provided in paragraph (e)(1)(ii) of this section, and subject to the limitations established by paragraph (c)(1)(ii) of this section, when an ECE experiences an event described in paragraphs (b)(9) or (b)(11) of this section, the administrator of the ECE shall file Form M-1 by the 30th day following the date of the event.

(ii) *Exception.* Paragraph (e)(1)(i) of this section does not apply to ECEs that experience an origination as described in paragraph (b)(9)(i) of this section. Such entities are required, subject to the limitations established by paragraph (c)(1)(ii) of this section,

to file the Form M-1 30 days prior to the date of the event.

(2) *General rule for MEWAs*—(i) *In general.* Except as provided in paragraph (e)(2)(ii) of this section, the administrator of the MEWA is required to register with the Secretary by filing the Form M-1 30 days prior to operating in any State.

(ii) *Exception.* Paragraph (e)(2)(i) of this section does not apply to MEWAs that, prior to the effective date of this section, were already in operation in a State (or States). Such entities are required to submit an annual filing pursuant to annual reporting rules described in paragraph (f)(2)(i) of this section for that State (or those States).

(3) *Special rule requiring MEWAs to make additional filings.* Subsequent to registering with the Secretary pursuant to paragraph (e)(2)(i) of this section, the administrator of a MEWA shall file the Form M-1:

(i) Within 30 days of knowingly operating in any additional State or States that were not indicated on a previous report filed pursuant to paragraph (e)(2)(i) or (f)(2)(i) of this section;

(ii) Within 30 days of the MEWA operating with regard to the employees of an additional employer (or employers, including one or more self-employed individuals) after a merger with another MEWA;

(iii) Within 30 days of the date the number of employees receiving coverage for medical care under the MEWA is at least 50 percent greater than the number of such employees on the last day of the previous calendar year; or

(iv) Within 30 days of experiencing a material change as defined in the Form M-1 instructions.

(4) *Anti-abuse rule.* If a MEWA or ECE neither offers nor provides benefits consisting of medical care within a State during the calendar year immediately following the year in which a filing is made by the ECE pursuant to paragraph (e)(1) of this section (due to an event described in paragraph (b)(9)(i) or (b)(11)(i) of this section) or a filing is made by the MEWA pursuant to paragraph (e)(2) or (3) of this section, with respect to operating in such State, such filing will be considered to have lapsed.

(5) *Multiple filings not required in certain circumstances.* If multiple filings are required under this paragraph (e), a single filing will satisfy this section so long as the filing is timely for each required filing.

(6) *Extensions.* (i) An extension may be granted for filing a report required by paragraph (e)(1), (2), or (3) of this section if the administrator complies with the extension procedure prescribed in the instructions to the Form M-1.

(ii) If the filing deadline set forth in this paragraph (e) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(f) *Annual reporting requirements and timing*—(1) *Period for which reporting is required.* A completed copy of the Form M-1 is required to be filed for each calendar year during all or part of which the MEWA is operating and for each of the three calendar years following an origination during all or part of which the ECE is operating.

(2) *Filing deadline*—(i) *General March 1 filing due date for annual filings.* Except as provided in paragraph (f)(2)(ii) of this section, a completed copy of the Form M-1 is required to be filed on or before each March 1 that follows a period for which reporting is required (as described in paragraph (f)(1) of this section).

(ii) *Exception.* Paragraph (f)(2)(i) of this section does not apply to ECEs and MEWAs if, between October 1 and December 31, the entity is required to make a filing pursuant to paragraph (e)(1), (2), or (3) of this section and makes that filing timely.

(3) *Extensions.* (i) An extension may be granted for filing a report required by paragraph (f)(2)(i) of this section if the administrator complies with the extension procedure prescribed in the instructions to the Form M-1.

(ii) If the filing deadline set forth in this paragraph (f) is a Saturday, Sunday, or federal holiday, the form must be filed no later than the next business day.

(4) *Examples.* The rules of paragraphs (e) and (f) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* MEWA A began offering coverage for medical care to the employees of two or more employers on July 1, 2003 (and continues to offer such coverage). MEWA A has satisfied all filing requirements to date.

(ii) *Conclusion.* In this *Example 1*, the administrator of MEWA A must continue to file a timely completed Form M-1 annual report each year, but the administrator is not required to register with the Secretary because MEWA A meets the exception to the registration requirement in paragraph (e)(2)(i) of this section and has not experienced any event described in paragraph (e)(3) that would require registering with the Secretary.

Example 2. (i) *Facts.* On August 25, 2013, MEWA B is operating in State P and has made all appropriate filings related to those operations. On December 22, 2013 one of the employers that participates in MEWA B is awarded a new contract in State Q. The employer adds an office in State Q and the employees there are eligible to access its group health plan.

(ii) *Conclusion.* In this *Example 2*, the administrator of MEWA B must report the addition of State Q by filing the Form M-1 within 30 days of knowing that it is operating in State Q.

Example 3. (i) *Facts.* As of July 1, 2013, MEWA C is preparing to operate in States Y and Z. MEWA C is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in paragraph (c)(2) of this section.

(ii) *Conclusion.* In this *Example 3*, the administrator of MEWA C is required to register with the Secretary by filing a completed Form M-1 30 days prior to operating in States Y or Z. The administrator of MEWA C must also report by filing the Form M-1 annually by every March 1 thereafter.

Example 4. (i) *Facts.* As of July 28, 2013, MEWA D is operating in States V and W. MEWA D has satisfied the requirements of (e)(2) and, if applicable, (e)(3) with respect to those States. MEWA D is not licensed or authorized to operate as a health insurance issuer in any State and does not meet any of the other exceptions set forth in (c)(2) of this section. On August 5, 2013 MEWA D knowingly begins operating in State X.

(ii) *Conclusion.* In this *Example 4*, the administrator of MEWA D is required to make an additional registration filing with the Secretary by September 4, 2013 (within 30 days of knowingly operating in State X). Additionally, the administrator of MEWA D must continue to file the Form M-1 annually by every March 1 thereafter.

Example 5. (i) *Facts.* ECE A began offering coverage for medical care to the employees of two or more employers on January 1, 2007 and ECE A has not been involved in any

mergers or experienced any other origination as described in paragraph (b)(9) of this section.

(ii) *Conclusion.* In this *Example 5*, ECE A was originated on January 1, 2007 and has not been originated since then. Therefore, the administrator of ECE A is not required to file a 2012 Form M-1 because the last time the ECE A was originated was January 1, 2007 which is more than three years prior. Further, the ECE has satisfied its reporting requirements by making three timely annual filings after its origination.

Example 6. (i) *Facts.* ECE B wants to begin offering coverage for medical care to the employees of two or more employers on July 1, 2013.

(ii) *Conclusion.* In this *Example 6*, the administrator of ECE B must file a completed Form M-1 on or before June 1, 2013 (which is 30 days prior to the origination date). In addition, the administrator of ECE B must file an updated copy of the Form M-1 by March 1, 2014 because the last date ECE B was originated was July 1, 2013 (which is less than three years prior to the March 1, 2014 due date). Furthermore, the administrator of ECE B must file the Form M-1 by March 1, 2015 and again by March 1, 2016 (because July 1, 2013 is less than three years prior to March 1, 2015 and March 1, 2016, respectively). However, if ECE B is not involved in any mergers and does not experience any other origination as described in paragraph (b)(9) of this section, there would not be a new origination date and no Form M-1 is required to be filed after March 1, 2016.

Example 7. (i) *Facts.* ECE D, which currently operates in State A and is still within the three-year window following its origination and the timely filing related thereto, is making preparations to operate in State B beginning on November 1, 2013.

(ii) *Conclusion.* In this *Example 7*, by operating in State B, ECE D experiences a special event within the three-year window following its origination and must make a filing by December 2, 2013.

Example 8. (i) *Facts.* Same facts as *Example 7*. ECE D satisfied its special filing requirement but is unsure about its annual filing requirements.

(ii) *Conclusion.* ECE D is exempt from the next annual filing due March 1, 2014 pursuant to the filing deadline exception under (f)(2)(ii) of this section. However, ECE D must continue making annual filings for the remainder of the three years following its origination.

Example 9. (i) *Facts.* MEWA E begins distributing marketing materials on August 31, 2013.

(ii) *Conclusion.* In this *Example 8*, because MEWA E began operating on August 31, 2013, the administrator of MEWA E must register with the Secretary by filing a completed Form M-1 on or before August 1, 2013 (30 days

prior to operating in any State). In addition, the administrator of MEWA *E* must file the Form M-1 annually by every March 1 thereafter.

Example 10. (i) *Facts.* Same facts as *Example 9*, but MEWA *E* registers on or before August 1, 2013 by filing a Form M-1 indicating it will begin operating in every State. However, in the calendar year immediately following the filing, MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z*.

(ii) *Conclusion.* In this *Example 10*, the registration for all States (other than State *Z*) have lapsed under (e)(4) because MEWA *E* only offered or provided benefits consisting of medical care to participants in State *Z* in the calendar year immediately following the filing. If subsequently, MEWA *E* begins offering or providing benefits consisting of medical care to participants in any additional State (or States), it must make a new registration filing pursuant to (e)(3) of this section.

(g) *Electronic filing.* A completed Form M-1 is filed with the Secretary by submitting it electronically as prescribed in the instructions to the Form M-1.

(h) *Penalties—(1) Civil penalties and procedures.* For information on civil penalties under section 502(c)(5) of ERISA for persons who fail to file the information required under this section, see § 2560.502c-5 of this chapter. For information relating to administrative hearings and appeals in connection with the assessment of civil penalties under section 502(c)(5) of ERISA, see §§ 2570.90 through 2570.101 of this chapter.

(2) *Criminal penalties and procedures.* For information on criminal penalties under section 519 of ERISA for persons who knowingly make false statements or false representation of fact with regards to the information required under this section, see section 501(b) of ERISA.

(3) *Cease and desist and summary seizure orders.* For information on the Secretary's authority to issue a cease and desist or summary seizure order under section 521 of ERISA, see § 2560.521.

[78 FR 13792, Mar. 1, 2013]

§ 2520.101-3 Notice of blackout periods under individual account plans.

(a) *In general.* In accordance with section 101(i) of the Act, the administrator of an individual account plan, within

the meaning of paragraph (d)(2) of this section, shall provide notice of any blackout period, within the meaning of paragraph (d)(1) of this section, to all participants and beneficiaries whose rights under the plan will be temporarily suspended, limited, or restricted by the blackout period (the "affected participants and beneficiaries") and to issuers of employer securities subject to such blackout period in accordance with this section.

(b) *Notice to participants and beneficiaries—(1) Content.* The notice required by paragraph (a) of this section shall be written in a manner calculated to be understood by the average plan participant and shall include—

(i) The reasons for the blackout period;

(ii) A description of the rights otherwise available to participants and beneficiaries under the plan that will be temporarily suspended, limited or restricted by the blackout period (e.g., right to direct or diversify assets in individual accounts, right to obtain loans from the plan, right to obtain distributions from the plan), including identification of any investments subject to the blackout period;

(iii) The length of the blackout period by reference to:

(A) The expected beginning date and ending date of the blackout period; or

(B) The calendar week during which the blackout period is expected to begin and end, provided that during such weeks information as to whether the blackout period has begun or ended is readily available, without charge, to affected participants and beneficiaries, such as via a toll-free number or access to a specific web site, and the notice describes how to access the information;

(iv) In the case of investments affected, a statement that the participant or beneficiary should evaluate the appropriateness of their current investment decisions in light of their inability to direct or diversify assets in their accounts during the blackout period (a notice that includes the advisory statement contained in paragraph 4. of the model notice in paragraph (e)(2) of this section will satisfy this requirement);

(v) In any case in which the notice required by paragraph (a) of this section is not furnished at least 30 days in advance of the last date on which affected participants and beneficiaries could exercise affected rights immediately before the commencement of the blackout period, except for a notice furnished pursuant to paragraph (b)(2)(ii)(C) of this section:

(A) A statement that Federal law generally requires that notice be furnished to affected participants and beneficiaries at least 30 days in advance of the last date on which participants and beneficiaries could exercise the affected rights immediately before the commencement of a blackout period (a notice that includes the statement contained in paragraph 5. of the model notice in paragraph (e)(2) of this section will satisfy this requirement), and

(B) An explanation of the reasons why at least 30 days advance notice could not be furnished; and

(vi) The name, address and telephone number of the plan administrator or other contact responsible for answering questions about the blackout period.

(2) *Timing.* (i) The notice described in paragraph (a) of this section shall be furnished to all affected participants and beneficiaries at least 30 days, but not more than 60 days, in advance of the last date on which such participants and beneficiaries could exercise the affected rights immediately before the commencement of any blackout period.

(ii) The requirement to give at least 30 days advance notice contained in paragraph (b)(2)(i) of this section shall not apply in any case in which—

(A) A deferral of the blackout period in order to comply with paragraph (b)(2)(i) of this section would result in a violation of the requirements of section 404(a)(1)(A) or (B) of the Act, and a fiduciary of the plan reasonably so determines in writing;

(B) The inability to provide the advance notice of a blackout period is due to events that were unforeseeable or circumstances beyond the reasonable control of the plan administrator, and a fiduciary of the plan reasonably so determines in writing; or

(C) The blackout period applies only to one or more participants or beneficiaries solely in connection with their becoming, or ceasing to be, participants or beneficiaries of the plan as a result of a merger, acquisition, divestiture, or similar transaction involving the plan or plan sponsor.

(iii) In any case in which paragraph (b)(2)(ii) of this section applies, the administrator shall furnish the notice described in paragraph (a) of this section to all affected participants and beneficiaries as soon as reasonably possible under the circumstances, unless such notice in advance of the termination of the blackout period is impracticable.

(iv) Determinations under paragraph (b)(2)(ii)(A) and (B) of this section must be dated and signed by the fiduciary.

(3) *Form and manner of furnishing notice.* The notice required by paragraph (a) of this section shall be in writing and furnished to affected participants and beneficiaries in any manner consistent with the requirements of § 2520.104b-1 of this chapter, including paragraph (c) of that section relating to the use of electronic media.

(4) *Changes in length of blackout period.* If, following the furnishing of a notice pursuant to this section, there is a change in the length of the blackout period (specified in such notice pursuant to paragraph (b)(1)(iii) of this section), the administrator shall furnish all affected participants and beneficiaries an updated notice explaining the reasons for the change and identifying all material changes in the information contained in the prior notice. Such notice shall be furnished to all affected participants and beneficiaries as soon as reasonably possible, unless such notice in advance of the termination of the blackout period is impracticable.

(c) *Notice to issuer of employer securities.* (1) The notice required by paragraph (a) of this section shall be furnished to the issuer of any employer securities held by the plan and subject to the blackout period. Such notice shall contain the information described in paragraph (b)(1)(i), (ii), (iii) and (vi) of this section and shall be furnished in accordance with the time frames prescribed in paragraph (b)(2) of this section. In the event of a change in the

length of the blackout period specified in such notice, the plan administrator shall furnish an updated notice to the issuer in accordance with the requirements of paragraph (b)(4) of this section.

(2) For purposes of this section, notice to the agent for service of legal process for the issuer shall constitute notice to the issuer, unless the issuer has provided the plan administrator with the name of another person for service of notice, in which case the plan administrator shall furnish notice to such person. Such notice shall be in writing, except that the notice may be in electronic or other form to the extent the person to whom notice must be furnished consents to receive the notice in such form.

(3) If the issuer designates the plan administrator as the person for service of notice pursuant to paragraph (c)(2) of this section, the issuer shall be deemed to have been furnished notice on the same date as notice is furnished to affected participants and beneficiaries pursuant to paragraph (b) of this section.

(d) *Definitions.* For purposes of this section—

(1) *Blackout period*—(i) *General.* The term “blackout period” means, in connection with an individual account plan, any period for which any ability of participants or beneficiaries under the plan, which is otherwise available under the terms of such plan, to direct or diversify assets credited to their accounts, to obtain loans from the plan, or to obtain distributions from the plan is temporarily suspended, limited, or restricted, if such suspension, limitation, or restriction is for any period of more than three consecutive business days.

(ii) *Exclusions.* The term “blackout period” does not include a suspension, limitation, or restriction—

(A) Which occurs by reason of the application of the securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934);

(B) Which is a regularly scheduled suspension, limitation, or restriction under the plan (or change thereto), provided that such suspension, limitation or restriction (or change) has been disclosed to affected plan participants and

beneficiaries through the summary plan description, a summary of material modifications, materials describing specific investment alternatives under the plan and limits thereon or any changes thereto, participation or enrollment forms, or any other documents and instruments pursuant to which the plan is established or operated that have been furnished to such participants and beneficiaries;

(C) Which occurs by reason of a qualified domestic relations order or by reason of a pending determination (by the plan administrator, by a court of competent jurisdiction or otherwise) whether a domestic relations order filed (or reasonably anticipated to be filed) with the plan is a qualified order within the meaning of section 206(d)(3)(B)(i) of the Act; or

(D) Which occurs by reason of an act or a failure to act on the part of an individual participant or by reason of an action or claim by a party unrelated to the plan involving the account of an individual participant.

(2) *Individual account plan.* The term “individual account plan” shall have the meaning provided such term in section 3(34) of the Act, except that such term shall not include a “one-participant retirement plan” within the meaning of paragraph (d)(3) of this section.

(3) *One-participant retirement plan.* The term “one-participant retirement plan” means a one-participant retirement plan as defined in section 101(i)(8)(B) of the Act.

(4) *Issuer.* The term “issuer” means an issuer as defined in section 3 of the Securities Exchange Act of 1934 (15 U.S.C. 78c), the securities of which are registered under section 12 of the Securities Exchange Act of 1934, or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934, or files or has filed a registration statement that has not yet become effective under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*), and that it has not withdrawn.

(5) *Calendar week.* For purposes of paragraph (b)(1)(iii)(B), the term “calendar week” means a seven day period beginning on Sunday and ending on Saturday.

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(e) *Model notice*—(1) *General*. The model notice set forth in paragraph (e)(2) of this section is intended to assist plan administrators in discharging their notice obligations under this section. Use of the model notice is not mandatory. However, a notice that uses the statements provided in paragraphs 4. and 5.(A) of the model notice will be deemed to satisfy the notice content requirements of paragraph (b)(1)(iv) and (b)(1)(v)(A), respectively, of this section. With regard to all other information required by paragraph (b)(1) of this section, compliance with the notice content requirements will depend on the facts and circumstances pertaining to the particular blackout period and plan.

(2) *Form and content of model notice*.

Important Notice Concerning Your Rights

Under The [Enter Name of Individual Account Plan]

[Enter date of notice]

1. This notice is to inform you that the [enter name of plan] will be [enter reasons for blackout period, as appropriate: changing investment options, changing recordkeepers, etc.].

2. As a result of these changes, you temporarily will be unable to [enter as appropriate: direct or diversify investments in your individual accounts (if only specific investments are subject to the blackout, those investments should be specifically identified), obtain a loan from the plan, or obtain a distribution from the plan]. This period, during which you will be unable to exercise these rights otherwise available under the plan, is called a “blackout period.” Whether or not you are planning retirement in the near future, we encourage you to carefully consider how this blackout period may affect your retirement planning, as well as your overall financial plan.

3. The blackout period for the plan [enter the following as appropriate: is expected to begin on [enter date] and end [enter date]/is expected to begin during the week of [enter date] and end during the week of [enter date]. During these weeks, you can determine whether the blackout period has started or ended by [enter instructions for use toll-free number or accessing web site].

4. [In the case of investments affected by the blackout period, add the following: During blackout period you will be unable to direct or diversify the assets held in your plan account. For this reason, it is very important that you review and consider the appropriateness of your current investments in

light of your inability to direct or diversify those investments during the blackout period. For your long-term retirement security, you should give careful consideration to the importance of a well-balanced and diversified investment portfolio, taking into account all your assets, income and investments.] [If the plan permits investments in individual securities, add the following: You should be aware that there is a risk to holding substantial portions of your assets in the securities of any one company, as individual securities tend to have wider price swings, up and down, in short periods of time, than investments in diversified funds. Stocks that have wide price swings might have a large loss during the blackout period, and you would not be able to direct the sale of such stocks from your account during the blackout period.]

5. [If timely notice cannot be provided (see paragraph (b)(1)(v) of this section) enter: (A) Federal law generally requires that you be furnished notice of a blackout period at least 30 days in advance of the last date on which you could exercise your affected rights immediately before the commencement of any blackout period in order to provide you with sufficient time to consider the effect of the blackout period on your retirement and financial plans. (B) [Enter explanation of reasons for inability to furnish 30 days advance notice.]]

6. If you have any questions concerning this notice, you should contact [enter name, address and telephone number of the plan administrator or other contact responsible for answering questions about the blackout period].

(f) *Effective date*. This section shall be effective and shall apply to any blackout period commencing on or after January 26, 2003. For the period January 26, 2003 to February 25, 2003, plan administrators shall furnish notice as soon as reasonably possible.

[68 FR 3727, Jan. 24, 2003]

§ 2520.101-4 [Reserved]

§ 2520.101-5 Annual funding notice for defined benefit pension plans.

(a) *In general*. (1) Except as provided in paragraphs (a)(2) and (3) of this section, pursuant to section 101(f) of the Act, the administrator of a defined benefit plan to which title IV of the Act applies shall furnish annually to each person specified in paragraph (f) of this section a funding notice that conforms to the requirements of this section.

(2) A plan administrator shall not be required to furnish a funding notice—

(i) In the case of a multiemployer plan, for a plan year if the due date for such notice is on or after the earlier of:

(A) The date the plan complies with the insolvency notice requirements of section 4245(e) or 4281(d)(3) of the Act and regulations thereunder; or

(B) The date the plan has distributed assets in satisfaction of all nonforfeitable benefits under the plan pursuant to section 4041A of the Act and the regulations thereunder.

(ii) In the case of a single-employer plan, for a plan year if the due date for the funding notice is on or after the date:

(A) The Pension Benefit Guaranty Corporation is appointed as trustee of the plan pursuant to section 4042 of the Act;

(B) The plan has distributed assets in satisfaction of all benefit liabilities in a distress termination pursuant to section 4041(c)(3)(B)(i) of the Act or of all guaranteed benefits in a distress termination pursuant to section 4041(c)(3)(B)(ii) of the Act; or

(C) The plan administrator filed a standard termination notice with the Pension Benefit Guaranty Corporation pursuant to 29 CFR 4041.25, provided that the proposed termination date is on or before the due date of the funding notice and a final distribution of assets in satisfaction of all benefit liabilities proceeds in accordance with section 4041(b) of the Act.

(3) In the case of a merger or consolidation of two or more plans—

(i) The plan administrator of a non-successor plan shall not be required to furnish a funding notice for the plan year in which the merger or consolidation occurred; and

(ii) The funding notice of the successor plan, for the plan year in which the merger or consolidation occurred, must, in addition to the requirements of paragraph (b) of this section, contain a general explanation, including the effective date, of the merger or consolidation and an identification of each plan (e.g., name and plan number) involved in the merger or consolidation.

(b) *Content of notice.* A funding notice shall include the following information:

(1) *Identifying information.* The name of the plan, the name, address, and phone number of the plan administrator and the plan's principal administrative officer (if different than the plan administrator), each plan sponsor's name and employer identification number, and the plan number.

(2) *Funding percentage*—(i) *Single-employer plans.* For single-employer plans, a statement as to whether the plan's funding target attainment percentage (as defined in section 303(d)(2) of the Act) for the notice year, and for each of the two preceding plan years, is at least 100 percent (and, if not, the actual percentages).

(ii) *Multiemployer plans.* For multiemployer plans, a statement as to whether the plan's funded percentage (as defined in section 305(i) of the Act) for the notice year, and for each of the two preceding plan years, is at least 100 percent (and, if not, the actual percentages).

(3) *Assets and liabilities*—(i) *Single-employer plans.* For single-employer plans—

(A) A statement of the total assets (separately stating the prefunding balance and the funding standard carry-over balance) and liabilities of the plan, determined in the same manner as under section 303 of the Act, as of the valuation date of the notice year and for each of the two preceding plan years, as reported in the annual report filed under section 104 of the Act for each such preceding plan year, and

(B) A statement of the value of the plan's assets and liabilities determined as of the last day of the notice year. For purposes of this statement, the value of the plan's assets is the fair market value of plan assets. Plan liabilities are equal to the present value of benefits accrued through the last day of the notice year determined in the same manner as liabilities are calculated under section 303 of the Act (including actuarial assumptions and methods), but using the interest rate under section 4006(a)(3)(E)(iv) of the Act in effect for the last month of the notice year.

(ii) *Multiemployer plans.* For multiemployer plans—

(A) A statement of the value of the plan's assets (determined in the same

manner as under section 304(c)(2) of the Act) and liabilities (determined in the same manner as under section 305(i)(8) of the Act, using reasonable actuarial assumptions as required under section 304(c)(3) of the Act) as of the valuation date of the notice year and each of the two preceding plan years, and

(B) A statement of the fair market value of plan assets as of the last day of the notice year, and as of the last day of each of the two preceding plan years as reported in the annual report filed under section 104(a) of the Act for each such preceding plan year.

(iii) *Contributions receivable.* For purposes of determining the fair market value of plan assets as of the last day of the notice year under paragraphs (b)(3)(i)(B) and (b)(3)(ii)(B) of this section, the plan administrator may, but is not required to, include contributions made after the notice year and before the notice is furnished to recipients, but only to the extent such contributions are treated for funding purposes as having been made on account of the notice year under section 303(g)(4) of the Act, in the case of a single-employer plan, or under section 304(c)(8) of the Act, in the case of a multiemployer plan.

(4) *Demographic information.* A statement of the number of participants and beneficiaries who, as of the valuation date of the notice year, are: Retired or separated from service and receiving benefits; retired or separated from service and entitled to future benefits (but currently not receiving benefits); or active participants under the plan. The statement shall indicate the number of participants and beneficiaries in each category and the sum of all such participants and beneficiaries. The terms “active” and “retired or separated” shall have the same meaning given to those terms in instructions to the annual report filed under section 104(a) of the Act.

(5) *Funding policy.* A statement setting forth—

- (i) The funding policy of the plan;
- (ii) The asset allocation of investments under the plan (expressed as percentages of total assets) as of the end of the notice year; and
- (iii) A general description of any investment policy of the plan as it re-

lates to the funding policy in paragraph (b)(5)(i) of this section and the asset allocation of investments under paragraph (b)(5)(ii) of this section.

(6) *Endangered, critical, or critical and declining status.* In the case of a multi-employer plan, a statement whether the plan was in endangered, critical, or critical and declining status under section 305 of the Act for the notice year and, if so—

(i) A statement describing how a person may obtain a copy of the plan’s funding improvement plan or rehabilitation plan, as appropriate, adopted under section 305 of the Act and the actuarial and financial data that demonstrate any action taken by the plan toward fiscal improvement;

(ii) A summary of the plan’s funding improvement plan or rehabilitation plan, including any update or modification of such funding improvement or rehabilitation plan adopted under section 305 of the Act during the notice year; and

(iii) In the case of a multiemployer plan in critical and declining status:

(A) The projected date of insolvency;

(B) A clear statement that such insolvency may result in benefit reductions; and

(C) A statement describing whether the plan sponsor has taken legally permitted actions to prevent insolvency.

(7) *Events having a material effect on liabilities or assets.* Subject to paragraph (g) of this section, in the case of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the year, an explanation of the amendment, scheduled benefit increase or reduction, or event, and a projection to the end of such plan year of the effect of the amendment, scheduled benefit increase or reduction, or event on plan liabilities.

(8) *Rules on termination or insolvency—*

(i) *Single-employer plans.* In the case of a single-employer plan, a summary of the rules governing termination of single-employer plans under subtitle C of title IV of the Act.

(ii) *Multiemployer plans.* In the case of a multiemployer plan, a summary of

the rules governing insolvency, including the limitations on benefit payments.

(9) *PBGC guarantees.* A general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

(10) *Annual report information.* A statement that a person entitled to notice under paragraph (f) of this section may obtain a copy of the annual report of the plan filed under section 104(a) of the Act upon request, through the Internet Web site of the Department of Labor, or through any Intranet Web site maintained by the applicable plan sponsor (or plan administrator on behalf of the plan sponsor).

(11) *Information disclosed to PBGC.* In the case of a single-employer plan, if applicable, a statement that the contributing sponsor of the plan or a member of the contributing sponsor's controlled group was required to provide information under section 4010 of the Act for the information year ending in the notice year (see 29 CFR 4010.5).

(12) *Additional information.* Any additional information that the plan administrator elects to include, provided that such information is necessary or helpful to understanding the mandatory information in the notice, or is otherwise permitted by law.

(c) *Style and format of notice.* Funding notices shall be written in a manner that is consistent with the style and format requirements of § 2520.102-2 of this chapter.

(d) *When to furnish notice.* (1) Except as provided in paragraph (d)(2) of this section, a funding notice shall be provided not later than 120 days after the end of the notice year.

(2) In the case of a small plan, a funding notice shall be provided not later than the earlier of the date on which the annual report is filed under section 104(a) of the Act or the latest date the annual report must be filed under that section (including extensions). For this purpose, a single-employer plan is a small plan if it meets the exception in section 303(g)(2)(B) of the Act, and a multiemployer plan is a small plan if it

had 100 or fewer participants on each day during the plan year preceding the notice year.

(e) *Manner of furnishing notice.* (1) [Reserved.]

(2) A funding notice must be furnished to the Pension Benefit Guaranty Corporation in a manner consistent with the requirements of part 4000 of title IV of the Act. The date that the notice is furnished to the Pension Benefit Guaranty Corporation is determined consistent with that part.

(f) *Persons entitled to notice.* Persons entitled to a funding notice under this section are:

(1) Each participant covered under the plan on the last day of the notice year;

(2) Each beneficiary receiving benefits under the plan on the last day of the notice year;

(3) Each alternate payee under the plan on the last day of the notice year;

(4) Each labor organization representing participants under the plan on the last day of the notice year;

(5) In the case of a multiemployer plan, each employer that, as of the last day of the notice year, is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject to withdrawal liability pursuant to section 4203 of the Act; and

(6) The Pension Benefit Guaranty Corporation.

(g) *Special rules and definitions for material effect disclosures.* (1) The term "current plan year" means the plan year after the notice year. Thus, for example, if the notice year is January 1, 2017 through December 31, 2017, then the current plan year would be January 1, 2018 through December 31, 2018.

(2) An event described in paragraph (b)(7) of this section is recognized as "taking effect" in the current plan year if the effect of the event is taken into account for the first time for funding under section 430 or 431 of the Internal Revenue Code, as applicable, in such year.

(3) An event described in paragraph (b)(7) of this section has a "material effect" if it results, or is projected to result, in an increase or decrease of five percent or more in the value of assets or liabilities from the valuation date of

the notice year. For this measurement, calculate assets and liabilities in the same manner as under paragraph (b)(2) of this section.

(4) An event described in paragraph (b)(7) of this section has a “material effect” if, in the judgment of the plan’s enrolled actuary, the effect of the event is considered material for purposes of the plan’s funding status under section 430 or 431, as applicable, of the Internal Revenue Code, without regard to paragraph (g)(3) of this section.

(5) An event described in paragraph (b)(7) of this section is “known” only if it is known by the plan administrator prior to 120 days before the due date of the notice. Thus, if an event otherwise described in paragraph (b)(7) first becomes known to a plan administrator 120 days or less before the due date of a notice, the plan administrator is not required to explain, or project the effect of, the event in that notice.

(6) The term “other known event” includes, but is not limited to, an extension of coverage under the existing terms of the plan to a new group of employees; a plan merger, consolidation, or spinoff pursuant to regulations under section 414(l) of the Internal Revenue Code; or, a shutdown of any facility, plant, store, or such other similar corporate event that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service. The term does not include market fluctuations.

(7) With respect to events described in paragraph (g)(4) of this section, the plan administrator may, instead of projecting the effect on plan liabilities to the end of the current plan year, include an explanation why the event is considered material by the enrolled actuary.

(8) *Example.* The following example illustrates the special rules and definitions of paragraph (g) of this section:

Example. Plan Y is a single-employer calendar year plan. Company X, the sponsor of Plan Y, adopts an amendment on June 1, 2017, offering a subsidized early retirement benefit to participants age 50 or older who retire on or after September 1, 2017 and before March 1, 2018. The amendment increases the liabilities of Plan Y by an amount greater than 5% of the value of Plan Y’s liabilities on January 1, 2017. Company X does not

make an election under Code section 412(d)(2) to accelerate recognition of the event for funding. The amendment is taken into account for the first time under section 430 of the Code as of the January 1, 2018 valuation date. Therefore, the amendment is recognized as taking effect under the final rule in 2018. Since the amendment adopted on June 1, 2017, is known more than 120 days prior to the April 30, 2018 due date of the 2017 funding notice, the amendment must be disclosed in the 2017 funding notice under paragraph (b)(7) of the final regulations as a material effect event taking effect in 2018 (*i.e.*, the current plan year).

(h) *Model notices.* (1) The appendices to this section contain a model notice for single-employer plans and a model notice for multiemployer plans. These models are intended to assist plan administrators in discharging their notice obligations under this section. Use of a model notice is not mandatory. However, subject to paragraph (h)(2) of this section, use of a model notice will be deemed to satisfy the requirements of paragraphs (b)(1) through (b)(11) and paragraph (c) of this section.

(2) To the extent a plan administrator elects to include in a model notice information described in paragraph (b)(12) of this section, such additional information must be consistent with the style and format requirements in paragraph (c) of this section.

(i) *Notice year.* For purposes of this section, the term “notice year” means the plan year to which the notice relates. For example, for a calendar year plan that must furnish its 2010 funding notice no later than the 120th day of 2011, the “notice year” is the 2010 plan year.

(j) *Alternative method of compliance for furnishing notice to PBGC for certain single-employer plans.* Notwithstanding any other provision of this section, the plan administrator of a single-employer plan is not required to furnish a notice to the Pension Benefit Guaranty Corporation annually if, based on the data described in paragraph (b)(3)(i)(A) of this section for the notice year, plan liabilities do not exceed total plan assets by more than \$50 million, provided that the plan administrator furnishes the latest available funding notice to the Pension Benefit Guaranty Corporation within 30 days of a written request.

(k) *Alternative method of compliance for multiemployer plans terminated by mass withdrawal.* (1) Notwithstanding any other provision of this section, for plan years beginning after the date specified in section 4041A(b)(2) of the Act, an alternative method of compliance is available in the case of a multi-employer plan that terminates as a result of the withdrawal of every employer from the plan or the cessation of the obligation of all employers to contribute under the plan, as described in section 4041A(a)(2) of the Act. Under this alternative method, the plan administrator shall furnish annually to each person described in paragraph (f)(1) through (3) of this section a notice that complies with paragraphs (c), (d), (e), and (k)(2) of this section.

(2) The notice includes:

(i) A statement of the fair market value of the plan's assets as of the last day of the notice year, and as of the last day of each of the two preceding plan years as reported in the annual report filed under section 104(a) of the Act for each such preceding plan year;

(ii) A statement of the amount of benefit payments made during the notice year and each of the two preceding plan years;

(iii) If a notice has not already been furnished pursuant to 29 CFR 4281.32, a statement that benefits may be reduced pursuant to section 4281(c) of the Act and a summary of the rules governing such reductions;

(iv) A summary of the rules governing insolvency, including the limitations on benefit payments, pursuant to paragraph (b)(8)(ii) of this section;

(v) The information described in paragraphs (b)(1), (b)(9), and (b)(10) of this section; and

(vi) Any additional information that the plan administrator elects to include, subject to the requirements of paragraph (b)(12) of this section.

(1) *Alternative method of compliance for Internal Revenue Code section 412(e)(3) plans.* (1) Notwithstanding any other provision of this section, an alternative method of compliance is available in the case of an insurance contract plan described in section 412(e)(3) of the Internal Revenue Code of 1986. Under this alternative method, the plan administrator shall furnish annually to each person described in paragraph (f) of this section a notice that complies with paragraphs (c), (d), (e), and (l)(2) of this section.

(2) The notice includes:

(i) An explanation that the plan is funded exclusively by an insurance contract or contracts, that such contract or contracts provide for the benefit payments to participants and beneficiaries, that such benefit payments are guaranteed by a licensed insurance company or companies, and the name of the insurance company or companies;

(ii) A statement whether, as of the last day of the notice year, there were any delinquent premiums and, if so, the amount and date of the delinquency and the effect on the plan and on participants and beneficiaries in the event of a policy lapse;

(iii) The information described in paragraph (b)(1), (b)(9), and (b)(10) of this section; and

(iv) Any additional information that the plan administrator elects to include, provided that such information meets the standard in paragraph (b)(12) of this section.

(m) *CSEC plans.* [Reserved]

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29 CFR Ch. XXV (7-1-19 Edition)

APPENDIX A TO § 2520.101-5—SINGLE-EMPLOYER PLAN MODEL ANNUAL FUNDING
NOTICE

PAPERWORK BURDEN DISCLOSURE NOTICE
OMB Control Number 1210-0126; expires 04/17/2017

Behind this cover page is a model notice that may be used to satisfy the mandatory disclosure requirements set forth in 29 CFR 2520.101-5. The model notice is a collection of information instrument subject to the Paperwork Reduction Act. Use of the model notice to meet the disclosure requirements is optional. You may also develop your own notice, provided it contains all of the information required by 29 CFR 2520.101-5. The Department of Labor estimates that it will take an average of approximately 21 hours for plan administrators to complete the model. You may send comments on this collection of information, including suggestions for reducing burden to: US Department of Labor, Policy and Research, Attention: PRA Officer, 200 Constitution Avenue, NW, Room N-5718, Washington, DC 20210. The disclosure requirements in 29 CFR 2520.101-5, referenced above, are also a collection of information under the PRA. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DO NOT INCLUDE THIS PAPERWORK REDUCTION ACT BANNER IN NOTICES TO
PARTICIPANTS AND BENEFICIAIRES**

ANNUAL FUNDING NOTICE
 For
 [insert name of single-employer pension plan]

Introduction

This notice includes important information about the funding status of your single-employer pension plan (the "Plan"). It also includes general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation ("PBGC"), a federal insurance agency. All traditional pension plans (called "defined benefit pension plans") must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is required by federal law. This notice is for the plan year beginning [insert beginning date] and ending [insert ending date] ("Plan Year").

How Well Funded Is Your Plan

The law requires the administrator of the Plan to tell you how well the Plan is funded, using a measure called the "funding target attainment percentage." The Plan divides its Net Plan Assets by Plan Liabilities to get this percentage. In general, the higher the percentage, the better funded the plan. The Plan's Funding Target Attainment Percentage for the Plan Year and each of the two preceding plan years is shown in the chart below. The chart also shows you how the percentage was calculated.

Funding Target Attainment Percentage			
	[insert Plan Year, e.g., 2015]	[insert plan year preceding Plan Year, e.g., 2014]	[insert plan year 2 years preceding Plan year, e.g., 2013]
1. Valuation Date	[insert date]	[insert date]	[insert date]
2. Plan Assets			
a. Total Plan Assets	[insert amount]	[insert amount]	[insert amount]
b. Funding Standard Carryover Balance	[insert amount]	[insert amount]	[insert amount]
c. Prefunding Balance	[insert amount]	[insert amount]	[insert amount]
d. Net Plan Assets (a) - (b) - (c) = (d)	[insert amount]	[insert amount]	[insert amount]

3. Plan Liabilities	[insert amount]	[insert amount]	[insert amount]
4. At-Risk Liabilities	[insert amount]	[insert amount]	[insert amount]
5. Funding Target Attainment Percentage (2d)/(3)	[insert percentage]	[insert percentage]	[insert percentage]

(Instructions: Report Valuation Date entries in accordance with section 303(g)(2) of ERISA. Report Total Plan Assets in accordance with section 303(g)(3) of ERISA. Report credit balances (i.e., funding standard carryover balance and prefunding balance) in accordance with section 303(f) of ERISA. Report Net Plan Assets, Plan Liabilities (i.e., funding target), and Funding Target Attainment Percentage in accordance with section 303(d)(2) of ERISA. The amount reported as “Plan Liabilities” should be the funding target determined without regard to at-risk assumptions, even if the plan is in at-risk status. At-Risk Liabilities are determined under section 303(i) of ERISA (taking into account section 303(i)(5) of ERISA). Report At-Risk Liabilities for any year covered by this chart in which the plan was in “at-risk” status within the meaning of section 303(i) of ERISA, only if At-Risk Liabilities are greater than Plan Liabilities; otherwise delete the entire row designated as number 4. Round off all amounts in this chart to the nearest dollar.)

Plan Assets and Credit Balances

The chart above shows certain “credit balances” called the Funding Standard Carryover Balance and Prefunding Balance. A plan might have a credit balance, for example, if in a prior year an employer contributed money to the plan above the minimum level required by law. Generally, an employer may credit the excess money toward the minimum level of contributions required by law that it must make in future years. Plans must subtract these credit balances from Total Plan Assets to calculate their Funding Target Attainment Percentage.

(Instructions: Include the preceding discussion, entitled Plan Assets and Credit Balances, only where such balances exist.)

Plan Liabilities

Plan Liabilities in line 3 of the chart above is an estimate of the amount of assets the Plan needs on the Valuation Date to pay for promised benefits under the Plan.

At-Risk Liabilities

The law considers a plan to be in “at risk” status if its funding target attainment percentage for the prior plan year was below a legal threshold. The sponsor of an at-risk plan must make certain assumptions and contribute more money to that plan. For example, plans in “at-risk” status must assume that all workers eligible to retire in the next 10 years will do so as soon as they can, and that they will take their distribution in whatever form would create the highest cost to the plan, without regard to whether those workers actually do so. The additional contributions that result from “at-risk” status may then remove a plan from this status. The Plan was in “at-risk” status in [enter year or years covered by the chart above]. The At-Risk Liabilities row in the chart above shows the increased liabilities resulting from “at-risk” status.

(Instructions: Include the preceding discussion, entitled At-Risk Liabilities, only in the case of a plan required to report At-Risk Liabilities. Delete the entire row designated as number 4 in the chart above if the At-Risk Liabilities discussion is not included in the notice.)

Year-End Assets and Liabilities

The asset values in the chart above are measured as of the first day of the Plan Year. They also are “actuarial values.” Actuarial values differ from market values in that they do not fluctuate daily based on changes in the stock or other markets. Actuarial values smooth out those fluctuations and can allow for more predictable levels of future contributions. Despite the fluctuations, market values tend to show a clearer picture of a plan’s funded status at a given point in time. As of [enter the last day of the Plan Year], the fair market value of the Plan’s assets was [enter amount]. On this same date, the Plan’s liabilities, determined using market rates, were [enter amount].

{Instructions: Insert the fair market value of the plan’s assets as of the last day of the plan year. You may include contributions made after the end of the plan year to which the notice relates and before the date the notice is timely furnished but only if such contributions are attributable to such plan year for funding purposes. A plan’s liabilities as of the last day of the plan year are equal to the present value, as of the last day of the plan year, of benefits accrued as of that same date. With the exception of the interest rate assumption, the present value should be determined using assumptions used to determine the funding target under section 303. The interest rate assumption is the rate provided under section 4006(a)(3)(E)(iv), but using the last month of the year to which the notice relates rather than the month preceding the first month of the year to which the notice relates. If, consistent with section 303(g)(2) of ERISA, the plan’s valuation date is not the first day of the plan year, make appropriate modifications to the preceding paragraph, e.g., replace “first day of” with “valuation date for.”}

{Instructions: If, pursuant to section 303(g)(3) of ERISA, the value of the plan’s assets in the chart above is fair market value, include the paragraph below rather than the paragraph above, but otherwise follow the instructions above.}

The asset values in the chart above are measured as of the first day of the Plan Year. As of [enter the last day of the Plan Year], the fair market value of the Plan’s assets was [enter amount]. On this same date, the Plan’s liabilities, determined using market rates, were [enter amount].

Participant Information

The total number of participants and beneficiaries covered by the Plan on the Valuation Date was [insert number]. Of this number, [insert number] were current employees, [insert number] were retired and receiving benefits, and [insert number] were retired or no longer working for the employer and have a right to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure to establish a funding policy for plan objectives. A funding policy relates to how much money is needed to pay promised benefits. The funding policy of the Plan is [insert a summary statement of the Plan’s funding policy].

Pension plans also have investment policies. These generally are written guidelines or general instructions for making investment management decisions. The investment policy of the Plan is [insert a summary statement of the Plan’s investment policy].

Under the investment policy, the Plan’s assets were allocated among the following categories of investments, as of the end of the Plan Year. These allocations are percentages of total assets:

{Instructions: Insert and complete either Alternative 1 or Alternative 2, below.}

Alternative 1:

Asset Allocations	Percentage
1. Cash (interest bearing and non-interest bearing)	_____
2. U.S. Government securities	_____
3. Corporate debt instruments (other than employer securities):	
Preferred	_____
All other	_____
4. Corporate stocks (other than employer securities):	
Preferred	_____
Common	_____
5. Partnership/joint venture interests	_____
6. Real estate (other than employer real property)	_____
7. Loans (other than to participants)	_____
8. Participant loans	_____
9. Value of interest in common/collective trusts	_____
10. Value of interest in pooled separate accounts	_____
11. Value of interest in master trust investment accounts	_____
12. Value of interest in 103-12 investment entities	_____
13. Value of interest in registered investment companies (e.g., mutual funds)	_____
14. Value of funds held in insurance co. general account (unallocated contracts)	_____
15. Employer-related investments:	
Employer Securities	_____
Employer real property	_____
16. Buildings and other property used in plan operation	_____
17. Other	_____

For information about the Plan’s investment in any of the following types of investments – common/collective trusts, pooled separate accounts, master trust investment accounts, or 103-12 investment entities – contact [insert the name, telephone number, email address or mailing address of the plan administrator or designated representative].

{Instructions: Percentages must total 100%. If a plan holds an interest in one or more of the direct filing entities (DFEs) noted above, i.e., MTIAs, CCTs, PSAs, or 103-12IEs and the administrator does not break out the DFE’s investments among the other asset classes, immediately following the asset allocation chart include the paragraph above informing recipients how to obtain more information regarding the plan’s DFE investments (e.g., the plan’s Schedule D and/or the DFE’s Schedule H). If a plan does not hold an interest in a DFE or the plan administrator breaks out the investments of all DFEs among the other asset classes, do not include the above paragraph. If the administrator knows the actual asset allocation of an MTIA, the MTIA entry (line 11) should not be completed and the investments of the MTIA should be reflected in the relevant asset classes.}

Alternative 2

Asset Allocations	Percentage:
Stocks	_____
Investment grade debt instruments	_____
High-yield debt instruments	_____
Real estate	_____
Other	_____

{Instructions: Percentages must total 100%. Follow the instructions for the latest Schedule R to Form 5500 to allocate investments to one of the above asset classes.}

Events Having a Material Effect on Assets or Liabilities

By law this notice must contain a written explanation of new events that have a material effect on plan liabilities or assets. This is because such events can significantly impact the funding condition of a plan. For the plan year beginning on *[insert the first day of the current plan year (i.e., the year after the notice year)]* and ending on *[insert the last day of the current plan year]*, the Plan expects the following events to have such an effect: *[Insert explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the current plan year, as well as a projection to the end of the current plan of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities].*

{Instructions: Include the preceding discussion, entitled Events having a Material Effect on Assets or Liabilities, only if and to the extent applicable.}

Right to Request a Copy of the Annual Report

Pension plans must file annual reports with the US Department of Labor. The report is called the "Form 5500." These reports contain financial and other information. You may obtain an electronic copy of your Plan's annual report by going to www.efast.dol.gov and using the search tool. Annual reports also are available from the US Department of Labor, Employee Benefits Security Administration's Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan's annual report by making a written request to the plan administrator. *[If the plan's annual report is available on an Intranet website maintained by the plan sponsor (or plan administrator on behalf of the plan sponsor), modify the preceding sentence to include a statement that the annual report also may be obtained through that website and include the website address.]* Annual reports do not contain personal information, such as the amount of your accrued benefits. You may contact your plan administrator if you want information about your accrued benefits. Your plan administrator is identified below under "Where To Get More Information."

Summary of Rules Governing Termination of Single-Employer Plans

If a plan terminates, there are specific termination rules that must be followed under federal law. A summary of these rules follows.

There are two ways an employer can terminate its pension plan. First, the employer can end a plan in a "standard termination" but only after showing the PBGC that such plan has enough money to pay all benefits owed to participants. Under a standard termination, a plan must either purchase an annuity from an insurance company (which will provide you with periodic retirement benefits, such as monthly for life or for a set period of time when you retire) or, if the plan allows, issue one lump-sum payment that covers your entire benefit. Your plan administrator must give you advance notice that identifies the insurance company (or companies) selected to provide the annuity. The PBGC's guarantee ends upon the purchase of an annuity or payment of the lump-sum. If the plan purchases an annuity for you from an insurance company and that company becomes unable to pay, the applicable state guaranty association guarantees the annuity to the extent authorized by that state's law.

Second, if the plan is not fully-funded, the employer may apply for a distress termination. To do so, however, the employer must be in financial distress and prove to a bankruptcy court or to the PBGC that the employer cannot remain in business unless the plan is terminated. If the application is granted, the PBGC will take over the plan as trustee and pay plan benefits, up to the legal limits, using plan assets and PBGC guarantee funds.

Under certain circumstances, the PBGC may take action on its own to end a pension plan. Most terminations initiated by the PBGC occur when the PBGC determines that plan termination is needed to protect the interests of plan participants or of the PBGC insurance program. The PBGC can do so if, for example, a plan does not have enough money to pay benefits currently due.

Benefit Payments Guaranteed by the PBGC

When the PBGC takes over a plan, it pays pension benefits through its insurance program. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. Most participants and beneficiaries receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits that are not guaranteed.

The amount of benefits that PBGC guarantees is determined as of the plan termination date. However, if a plan terminates during a plan sponsor's bankruptcy, then the amount guaranteed is determined as of the date the sponsor entered bankruptcy.

The PBGC maximum benefit guarantee is set by law and is updated each calendar year. For a plan with a termination date or sponsor bankruptcy date, as applicable in *[insert current calendar year]*, the maximum guarantee is *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year]* per month, or *[insert amount from PBGC web site, www.pbgc.gov, applicable for the current calendar year]* per year, for a benefit paid to a 65-year-old retiree with no survivor benefit. If a plan terminates during a plan sponsor's bankruptcy, the maximum guarantee is fixed as of the calendar year in which the sponsor entered bankruptcy. The maximum guarantee is lower for an individual who begins receiving benefits from PBGC before age 65 reflecting the fact that younger retirees are expected to receive more monthly pension checks over their lifetimes. *[If the plan does not provide for commencement of benefits before age 65, you may omit this sentence.]* Similarly, the maximum guarantee is higher for an individual who starts receiving benefits from PBGC after age 65. The maximum guarantee by age can be found on PBGC's website, www.pbgc.gov. The guaranteed amount is also reduced if a benefit will be provided to a survivor of the plan participant.

The PBGC guarantees "basic benefits" earned before a plan is terminated, which include *[Include the following guarantees that apply to benefits available under the plan.]*:

- pension benefits at normal retirement age;
- most early retirement benefits;
- annuity benefits for survivors of plan participants; and
- disability benefits for a disability that occurred before the date the plan terminated or the date the sponsor entered bankruptcy, as applicable.

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The PBGC does not guarantee certain types of benefits *[Include the following guarantee limits that apply to the benefits available under the plan.]*:

- The PBGC does not guarantee benefits for which you do not have a vested right, usually because you have not worked enough years for the company.
- The PBGC does not guarantee benefits for which you have not met all age, service, or other requirements.
- Benefit increases and new benefits that have been in place for less than one year are not guaranteed. Those that have been in place for less than five years are only partly guaranteed.
- Early retirement payments that are greater than payments at normal retirement age may not be guaranteed. For example, a supplemental benefit that stops when you become eligible for Social Security may not be guaranteed.
- Benefits other than pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay, are not guaranteed.
- The PBGC generally does not pay lump sums exceeding \$5,000.

In some circumstances, participants and beneficiaries still may receive some benefits that are not guaranteed. This depends on how much money the terminated plan has and how much the PBGC recovers from employers for plan underfunding.

For additional general information about the PBGC and the pension insurance program guarantees, go to the “General FAQs about PBGC” on PBGC’s website at www.pbgc.gov/general/faqs. Please contact your employer or plan administrator for specific information about your pension plan or pension benefit. PBGC does not have that information. See “Where to Get More Information About Your Plan,” below.

Corporate and Actuarial Information on File with PBGC

A plan sponsor must provide the PBGC with financial information about itself and actuarial information about the plan under certain circumstances, such as when the funding target attainment percentage of the plan (or any other pension plan sponsored by a member of the sponsor’s controlled group) falls below 80 percent (other triggers may also apply). The sponsor of the Plan, *[enter name of plan sponsor]* or a member of its controlled group, was subject to this requirement to provide corporate financial information and plan actuarial information to the PBGC. The PBGC uses this information for monitoring and other purposes.

[Instructions: Insert the preceding paragraph entitled “Corporate and Actuarial Information on File with PBGC” only if a reporting under section 4010 of ERISA was required for the information year ending in the Plan Year. Modify the preceding paragraph, as appropriate, if the plan sponsor is the sole member of its controlled group.]

Where to Get More Information

For more information about this notice, you may contact *[enter name of plan administrator and if applicable, principal administrative officer]*, at *[enter phone number and address and insert email address if appropriate]*. For identification purposes, the official plan number is *[enter plan number]* and the plan sponsor’s name and employer identification number or “EIN” are *[enter name and EIN of plan sponsor]*.

PAPERWORK BURDEN DISCLOSURE NOTICE
OMB Control Number 1210-0126; expires 04/17/2017

Behind this cover page is a model notice that may be used to satisfy the mandatory disclosure requirements set forth in 29 CFR 2520.101-5. The model notice is a collection of information instrument subject to the Paperwork Reduction Act. Use of the model notice to meet the disclosure requirements is optional. You may also develop your own notice, provided it contains all of the information required by 29 CFR 2520.101-5. The Department of Labor estimates that it will take an average of approximately 21 hours for plan administrators to complete the model. You may send comments on this collection of information, including suggestions for reducing burden to: US Department of Labor, Policy and Research, Attention: PRA Officer, 200 Constitution Avenue, NW, Room N-5718, Washington, DC 20210. The disclosure requirements in 29 CFR 2520.101-5, referenced above, are also a collection of information under the PRA. The public is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DO NOT INCLUDE THIS PAPERWORK REDUCTION ACT BANNER IN NOTICES TO PARTICIPANTS AND BENEFICIARIES

ANNUAL FUNDING NOTICE

For

[insert name of multiemployer pension plan]

Introduction

This notice includes important information about the funding status of your multiemployer pension plan (the “Plan”). It also includes general information about the benefit payments guaranteed by the Pension Benefit Guaranty Corporation (“PBGC”), a federal insurance agency. All traditional pension plans (called “defined benefit pension plans”) must provide this notice every year regardless of their funding status. This notice does not mean that the Plan is terminating. It is provided for informational purposes and you are not required to respond in any way. This notice is required by federal law. This notice is for the plan year beginning *[insert beginning date]* and ending *[insert ending date]* (“Plan Year”).

How Well Funded Is Your Plan

The law requires the administrator of the Plan to tell you how well the Plan is funded, using a measure called the “funded percentage.” The Plan divides its assets by its liabilities on the Valuation Date for the plan year to get this percentage. In general, the higher the percentage, the better funded the plan. The Plan’s funded percentage for the Plan Year and each of the two preceding plan years is shown in the chart below. The chart also states the value of the Plan’s assets and liabilities for the same period.

Funded Percentage			
	<i>[insert Plan Year, e.g., 2015]</i>	<i>[insert plan year preceding Plan Year, e.g., 2014]</i>	<i>[insert plan year 2 years preceding Plan Year, e.g., 2013]</i>
Valuation Date	<i>[insert date]</i>	<i>[insert date]</i>	<i>[insert date]</i>
Funded Percentage	<i>[insert percentage]</i>	<i>[insert percentage]</i>	<i>[insert percentage]</i>

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Value of Assets	[insert amount]	[insert amount]	[insert amount]
Value of Liabilities	[insert amount]	[insert amount]	[insert amount]

{Instructions: The plan's "funded percentage" is equal to a fraction, the numerator of which is the actuarial value of the plan's assets (determined in the same manner as under section 304(c)(2) of ERISA) and the denominator of which is the accrued liability of the plan (under section 305(i)(8) of ERISA, using reasonable actuarial assumptions as required under section 304(c)(3) of ERISA). Report the value of the plan's assets and liabilities in the same manner as under section 304 of ERISA (but determining the plan's liabilities under section 305(i)(8) of ERISA, using reasonable actuarial assumptions as required under section 304(c)(3) of ERISA) as of the plan's valuation date for the plan year. Round off all amounts in this chart to the nearest dollar.}

Year-End Fair Market Value of Assets

The asset values in the chart above are measured as of the Valuation Date. They also are "actuarial values." Actuarial values differ from market values in that they do not fluctuate daily based on changes in the stock or other markets. Actuarial values smooth out those fluctuations and can allow for more predictable levels of future contributions. Despite the fluctuations, market values tend to show a clearer picture of a plan's funded status at a given point in time. The asset values in the chart below are market values and are measured on the last day of the Plan Year. The chart also includes the year-end market value of the Plan's assets for each of the two preceding plan years.

	[insert last day of Plan Year, e.g., 2015]	[insert last day of plan year preceding Plan Year, e.g., 2014]	[insert last day of plan year 2 years preceding Plan Year, e.g., 2013]
Fair Market Value of Assets	[insert amount]	[insert amount]	[insert amount]

{Instructions: Insert the fair market value of the plan's assets as of the last day of the plan year. You may include contributions made after the end of the plan year to which the notice relates and before the date the notice is timely furnished but only if such contributions are attributable to such plan year for funding purposes. For each of the two preceding plan years, you may use the fair market value of assets on the last day of the plan year as reported in the annual report for such plan year.}

Endangered, Critical, or Critical and Declining Status

Under federal pension law, a plan generally is in "endangered" status if its funded percentage is less than 80 percent. A plan is in "critical" status if the funded percentage is less than 65 percent (other factors may also apply). A plan is in "critical and declining" status if it is in critical status and is projected to become insolvent (run out of money to pay benefits) within 15 years (or within 20 years if a special rule applies). If a pension plan enters endangered status, the trustees of the plan are required to adopt a funding improvement plan. Similarly, if a pension plan enters critical status or critical and declining status, the trustees of the plan are required to adopt a rehabilitation plan. Funding improvement and rehabilitation plans establish steps and benchmarks for pension plans to improve their funding status over a

specified period of time. The plan sponsor of a plan in critical and declining status may apply for approval to amend the plan to reduce current and future payment obligations to participants and beneficiaries.

(Instructions: Select and complete the appropriate option below.)

{Option one}

The Plan was not in endangered, critical, or critical and declining status in the Plan Year.

{Option two}

The Plan was in *[insert “endangered” or “critical”]* status in the Plan Year ending *[insert last day of Plan Year]* because *[insert summary description of why plan was in this status based on statutory factors]*. In an effort to improve the Plan’s funding situation, the trustees adopted *[insert summary of the plan’s funding improvement or rehabilitation plan, including when adopted and expected duration, and a description of any modification or update to the plan adopted during the plan year to which the notice relates]*. You may get a copy of the Plan’s *[insert “funding improvement plan” or “rehabilitation plan”]*, any update to such plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement. You may get this information by contacting the plan administrator. *[If applicable, insert: “Or you may obtain this information at [insert Intranet address of plan sponsor (or plan administrator on behalf of the plan sponsor)].”]*

{Option three}

The Plan was in critical and declining status in the Plan Year ending *[insert last day of Plan Year]* because *[insert summary description of why plan was in this status based on statutory factors]*. The Plan is projected to be insolvent in the *[insert plan year]* Plan Year. Such insolvency may result in benefit reductions. In an effort to improve the Plan’s funding situation, the trustees adopted a rehabilitation plan on *[insert date]*. The rehabilitation plan *[Insert a summary of the plan’s rehabilitation plan, including expected duration and a description of any modification or update to the plan adopted during the plan year to which the notice relates]*. *[Insert the following if applicable: The plan sponsor has taken the following legally permitted actions to prevent insolvency: [Insert explanation of actions].”* You may get a copy of the Plan’s rehabilitation plan, any update to such plan and the actuarial and financial data that demonstrate any action taken by the Plan toward fiscal improvement. You may get this information by contacting the plan administrator. *[If applicable, insert: “Or you may obtain this information at [insert Intranet address of plan sponsor (or plan administrator on behalf of the plan sponsor)].”]*

If the Plan is in endangered, critical, or critical and declining status for the plan year ending *[insert the last day of the plan year following the Plan Year]*, separate notification of that status has or will be provided.

Participant Information

The total number of participants and beneficiaries covered by the Plan on the valuation date was *[insert number]*. Of this number, *[insert number]* were current employees, *[insert number]* were retired and receiving benefits, and *[insert number]* were retired or no longer working for the employer and have a right to future benefits.

Funding & Investment Policies

Every pension plan must have a procedure to establish a funding policy for plan objectives. A funding policy relates to how much money is needed to pay promised benefits. The funding policy of the Plan is *[insert a summary statement of the Plan’s funding policy]*.

Pension plans also have investment policies. These generally are written guidelines or general instructions for making investment management decisions. The investment policy of the Plan is *[insert a summary statement of the Plan’s investment policy]*.

Under the Plan’s investment policy, the Plan’s assets were allocated among the following categories of investments, as of the end of the Plan Year. These allocations are percentages of total assets:

[Instructions: Insert and complete either Alternative 1 or Alternative 2, below.]

Alternative 1:

Asset Allocations	Percentage
1. Cash (Interest bearing and non-interest bearing)	_____
2. U.S. Government securities	_____
3. Corporate debt instruments (other than employer securities):	_____
Preferred	_____
All other	_____
4. Corporate stocks (other than employer securities):	_____
Preferred	_____
Common	_____
5. Partnership/joint venture interests	_____
6. Real estate (other than employer real property)	_____
7. Loans (other than to participants)	_____
8. Participant loans	_____
9. Value of interest in common/collective trusts	_____
10. Value of interest in pooled separate accounts	_____
11. Value of interest in 103-12 investment entities	_____
12. Value of interest in registered investment companies (e.g., mutual funds)	_____
13. Value of funds held in insurance co. general account (unallocated contracts)	_____
14. Employer-related investments:	_____
Employer Securities	_____
Employer real property	_____
15. Buildings and other property used in plan operation	_____
16. Other	_____

For information about the Plan’s investment in any of the following types of investments—common/collective trusts, pooled separate accounts, or 103-12 investment entities – contact *[insert the name, telephone number, email address or mailing address of the plan administrator or designated representative]*.

{Instructions: Percentages must total 100%. If a plan holds an interest in one or more of the direct filing entities (DFEs) noted above, i.e., CCTs, PSAs, or 103-12IEs and the administrator does not break out the DFE’s investments among the other asset classes, immediately following the asset allocation chart include the paragraph above informing recipients how to obtain more information regarding the plan’s DFE investments (e.g., the plan’s Schedule D and/or the DFE’s Schedule H). If a plan does not hold an interest in a DFE or the administrator breaks out the investments of all DFEs among the other asset classes, do not include the above paragraph.

Alternative 2

<u>Asset Allocations</u>	<u>Percentage:</u>
Stocks	_____
Investment grade debt instruments	_____
High-yield debt instruments	_____
Real estate	_____
Other	_____

{Instructions: Percentages must total 100%. Follow the instructions in the latest Schedule R to Form 5500 to allocate investments to one of the above asset classes.

Events Having a Material Effect on Assets or Liabilities

By law this notice must contain a written explanation of new events that have a material effect on plan liabilities or assets. This is because such events can significantly impact the funding condition of a plan. For the plan year beginning on *[insert the first day of the current plan year (i.e., the year after the notice year)]* and ending on *[insert the last day of the current plan year]*, the Plan expects the following events to have such an effect: *[Insert explanation of any plan amendment, scheduled benefit increase or reduction, or other known event taking effect in the current plan year and having a material effect on plan liabilities or assets for the current plan year, as well as a projection to the end of the current plan of the effect of the amendment, scheduled increase or reduction, or event on plan liabilities].*

{Instructions: Include the preceding discussion, entitled Events having a Material Effect on Assets or Liabilities, only if and to the extent applicable.}

Right to Request a Copy of the Annual Report

Pension plans must file annual reports with the US Department of Labor. The report is called the “Form 5500.” These reports contain financial and other information. You may obtain an electronic copy of your Plan’s annual report by going to www.efast.dol.gov and using the search tool. Annual reports also are available from the US Department of Labor, Employee Benefits Security Administration’s Public Disclosure Room at 200 Constitution Avenue, NW, Room N-1513, Washington, DC 20210, or by calling 202.693.8673. Or you may obtain a copy of the Plan’s annual report by making a written request to the plan administrator. *[If the plan’s annual report is available on an Intranet website maintained by the plan sponsor (or plan administrator on behalf of the plan sponsor), modify the preceding sentence to include a statement that the annual report also may be obtained through that website and include the website address.]* Annual reports do not contain personal information, such as the amount of your accrued benefit. You may contact your plan

administrator if you want information about your accrued benefits. Your plan administrator is identified below under “Where To Get More Information.”

Summary of Rules Governing Insolvent Plans

Federal law has a number of special rules that apply to financially troubled multiemployer plans that become insolvent, either as ongoing plans or plans terminated by mass withdrawal. The plan administrator is required by law to include a summary of these rules in the annual funding notice. A plan is insolvent for a plan year if its available financial resources are not sufficient to pay benefits when due for that plan year. An insolvent plan must reduce benefit payments to the highest level that can be paid from the plan’s available resources. If such resources are not enough to pay benefits at the level specified by law (see Benefit Payments Guaranteed by the PBGC, below), the plan must apply to the PBGC for financial assistance. The PBGC will loan the plan the amount necessary to pay benefits at the guaranteed level. Reduced benefits may be restored if the plan’s financial condition improves.

A plan that becomes insolvent must provide prompt notice of its status to participants and beneficiaries, contributing employers, labor unions representing participants, and PBGC. In addition, participants and beneficiaries also must receive information regarding whether, and how, their benefits will be reduced or affected, including loss of a lump sum option.

Benefit Payments Guaranteed by the PBGC

The maximum benefit that the PBGC guarantees is set by law. Only benefits that you have earned a right to receive and that cannot be forfeited (called vested benefits) are guaranteed. There are separate insurance programs with different benefit guarantees and other provisions for single-employer plans and multiemployer plans. Your Plan is covered by PBGC’s multiemployer program. Specifically, the PBGC guarantees a monthly benefit payment equal to 100 percent of the first \$11 of the Plan’s monthly benefit accrual rate, plus 75 percent of the next \$33 of the accrual rate, times each year of credited service. The PBGC’s maximum guarantee, therefore, is \$35.75 per month times a participant’s years of credited service.

Example 1: If a participant with 10 years of credited service has an accrued monthly benefit of \$600, the accrual rate for purposes of determining the PBGC guarantee would be determined by dividing the monthly benefit by the participant’s years of service ($\$600/10$), which equals \$60. The guaranteed amount for a \$60 monthly accrual rate is equal to the sum of \$11 plus \$24.75 ($.75 \times \$33$), or \$35.75. Thus, the participant’s guaranteed monthly benefit is \$357.50 ($\35.75×10).

Example 2: If the participant in Example 1 has an accrued monthly benefit of \$200, the accrual rate for purposes of determining the guarantee would be \$20 (or $\$200/10$). The guaranteed amount for a \$20 monthly accrual rate is equal to the sum of \$11 plus \$6.75 ($.75 \times \$9$), or \$17.75. Thus, the participant’s guaranteed monthly benefit would be \$177.50 ($\17.75×10).

The PBGC guarantees pension benefits payable at normal retirement age and some early retirement benefits. In addition, the PBGC guarantees qualified preretirement survivor benefits (which are preretirement death benefits payable to the surviving spouse of a participant who dies before starting to receive benefit payments). In calculating a person’s monthly payment,

the PBGC will disregard any benefit increases that were made under a plan within 60 months before the earlier of the plan's termination or insolvency (or benefits that were in effect for less than 60 months at the time of termination or insolvency). Similarly, the PBGC does not guarantee benefits above the normal retirement benefit, disability benefits not in pay status, or non-pension benefits, such as health insurance, life insurance, death benefits, vacation pay, or severance pay.

For additional information about the PBGC and the pension insurance program guarantees, go to the Multiemployer Page on PBGC's website at www.pbgc.gov/multiemployer. Please contact your employer or plan administrator for specific information about your pension plan or pension benefit. PBGC does not have that information. See "Where to Get More Information About Your Plan," below.

Where to Get More Information

For more information about this notice, you may contact [enter name of plan administrator and if applicable, principal administrative officer], at [enter phone number and address and insert email address if appropriate]. For identification purposes, the official plan number is [enter plan number] and the plan sponsor's name and employer identification number or "EIN" is [enter name and EIN of plan sponsor].

[80 FR 5645, Feb. 2, 2015]

§ 2520.101-6 Multiemployer pension plan information made available on request.

(a) *In general.* For purposes of compliance with the requirements of section 101(k) of the Employee Retirement Income Security Act of 1974, as amended (the Act), 29 U.S.C. 1001, *et seq.*, the administrator of a multiemployer pension plan shall, in accordance with the requirements of this section, furnish copies of reports and applications described in paragraph (c) of this section to plan participants, beneficiaries, employee representatives and contributing employers, described in paragraph (e) of this section.

(b) *Obligation to furnish.* (1) Except as provided in paragraph (d) of this section, the administrator of a multiemployer pension plan shall, not later than 30 days after receipt of a written request for a report(s) or application(s) described in paragraph (c) of this section from a plan participant, beneficiary, employee representative or contributing employer described in paragraph (e) of this section, furnish the requested document or documents to the requester.

(2) The plan administrator shall furnish reports and applications pursuant

to paragraph (b)(1) of this section in a manner consistent with the requirements of 29 CFR 2520.104b-1, including paragraph (c) of that section relating to the use of electronic media.

(3) The plan administrator may impose a reasonable charge to cover the costs of furnishing documents pursuant to this section, but in no event may such charge exceed—

(i) The lesser of: (A) The actual cost to the plan for the least expensive means of acceptable reproduction of the document(s) or (B) 25 cents per page; plus

(ii) The cost of mailing or delivery of the document.

(c) *Documents to be furnished.* For purposes of paragraph (a) of this section, and subject to paragraph (d) of this section, a plan participant, beneficiary, employee representative or contributing employer described in paragraph (e) of this section, shall be entitled to request and receive a copy of any:

(1) Periodic actuarial report. For this purpose the term "periodic actuarial report" means any—

(i) Actuarial report prepared by an actuary of the plan and received by the plan at regularly scheduled, recurring intervals; and

(ii) Study, test (including a sensitivity test), document, analysis or

other information (whether or not called a "report") received by the plan from an actuary of the plan that depicts alternative funding scenarios based on a range of alternative actuarial assumptions, whether or not such information is received by the plan at regularly scheduled, recurring intervals.

(2) Quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor (without regard to whether such advisor is a fiduciary within the meaning of section 3(21) of the Act) or other fiduciary; and

(3) Application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act or section 431(d) of the Internal Revenue Code of 1986 and the determination of such Secretary pursuant to such application.

(d) *Limitations and exceptions.* For purposes of this section, reports and applications (and related determinations) required to be disclosed under this section shall not include:

(1) Any report or application that was furnished to the requester within the 12-month period immediately preceding the date on which the request is received by the plan;

(2) Any report or application that, as of the date on which the request is received by the plan, has been in the plan's possession for 6 years or more;

(3) Any report described in paragraph (c)(1) and (c)(2) of this section that, as of the date on which the request is received by the plan, has not been in the plan's possession for at least 30 days; except that, if the plan administrator elects not to furnish any such document, the administrator shall furnish a notice, not later than 30 days after the date on which request is received by the plan, informing the requester of the existence of the document and the earliest date on which the document can be furnished by the plan.

(4) Any information or data which served as the basis for any report or application described in paragraph (c) of this section, although nothing herein shall limit any other right that a person may have to review or obtain such information under the Act; or

(5)(i) Any information within a report or application that the plan administrator reasonably determines to be either:

(A) individually identifiable information with respect to any plan participant, beneficiary, employee, fiduciary, or contributing employer, except that such limitation shall not apply to an investment manager, adviser, or other person (other than an employee of the plan) preparing a financial report described in paragraph (c)(2) of this section; or

(B) proprietary information regarding the plan, any contributing employer, or entity providing services to the plan.

(ii) For purposes of paragraph (d)(5)(i)(B) of this section, the term "proprietary information" means trade secrets and other non-public information (e.g., processes, procedures, formulas, methodologies, techniques, strategies) that, if disclosed by the plan, may cause, or increase a reasonable risk of, financial harm to the plan, a contributing employer, or entity providing services to the plan.

(iii) The plan administrator may treat information relating to a contributing employer or entity providing services to the plan as other than proprietary if the contributing employer or service provider has not identified such information as proprietary.

(iv) A plan administrator shall inform the requester if the plan administrator withholds any information described in paragraph (d)(5)(i) of this section from a report or application requested under paragraph (b) of this section.

(e) *Persons entitled to request documents.* For purposes of this section, a plan participant, beneficiary, employee representative or contributing employer entitled to request and receive reports and applications includes:

(1) Any participant within the meaning of section 3(7) of the Act;

(2) Any beneficiary receiving benefits under the plan;

(3) Any labor organization representing participants under the plan;

(4) Any employer that is a party to the collective bargaining agreement(s) pursuant to which the plan is maintained or who otherwise may be subject

§ 2520.102-1

to withdrawal liability pursuant to section 4203 of the Act.

[75 FR 9341, Mar. 2, 2010]

Subpart B—Contents of Plan Descriptions and Summary Plan Descriptions

§ 2520.102-1 [Reserved]

§ 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 to misleading, misinforming or failing to inform participants and beneficiaries. Any description of exception, 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 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

29 CFR Ch. XXV (7-1-19 Edition)

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) 10% 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 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.”

[42 FR 37180, July 19, 1977]

§ 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 the 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 paragraphs (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—

(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 §§ 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 §§ 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.

(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-1 and “Identification Numbers Under ERISA” (Publ. 1004), published jointly by DOL, IRS, and PBGC);

(d) The type of pension or welfare plan, e.g. pension plans—defined benefit, defined contribution, 401(k), cash balance, money purchase, profit sharing, ERISA section 404(c) plan, etc., and for welfare plans—group health plans, disability, pre-paid legal services, etc.

(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 §§ 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 and the information identified in paragraphs (j)(1), (2) and (3) of this section, 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. In addition, the summary plan description shall include a description of the procedures governing qualified domestic relations order (QDRO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator.

(2) For employee welfare benefit plans, it shall also include a statement of the conditions pertaining to eligibility to receive benefits, and a de-

scription or summary of the benefits. In the case of a welfare plan providing extensive schedules of benefits (a group health plan, for example), only a general description of such benefits is required if reference is made to detailed schedules of benefits which are available without cost to any participant or beneficiary who so requests. In addition, the summary plan description shall include a description of the procedures governing qualified medical child support order (QMCSO) determinations or a statement indicating that participants and beneficiaries can obtain, without charge, a copy of such procedures from the plan administrator.

(3) For employee welfare benefit plans that are group health plans, as defined in section 733(a)(1) of the Act, the summary plan description shall include a description of: any cost-sharing provisions, including premiums, deductibles, coinsurance, and copayment amounts for which the participant or beneficiary will be responsible; any annual or lifetime caps or other limits on benefits under the plan; the extent to which preventive services are covered under the plan; whether, and under what circumstances, existing and new drugs are covered under the plan; whether, and under what circumstances, coverage is provided for medical tests, devices and procedures; provisions governing the use of network providers, the composition of the provider network, and whether, and under what circumstances, coverage is provided for out-of-network services; any conditions or limits on the selection of primary care providers or providers of speciality medical care; any conditions or limits applicable to obtaining emergency medical care; and any provisions requiring preauthorizations or utilization review as a condition to obtaining a benefit or service under the plan. In the case of plans with provider networks, the listing of providers may be furnished as a separate document that accompanies the plan's SPD, provided that the summary plan description contains a general description of the provider network and provided further that the SPD contains a statement that provider lists are furnished automatically,

without charge, as a separate document.

(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;

(l) For both pension and welfare benefit plans, a statement clearly identifying circumstances which may result in disqualification, ineligibility, or denial, loss, forfeiture, suspension, offset, reduction, or recovery (e.g., by exercise of subrogation or reimbursement rights) 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 paragraphs (j) and (k) of this section. In addition to other required information, plans must include a summary of any plan provisions governing the authority of the plan sponsors or others to terminate the plan or amend or eliminate benefits under the plan and the circumstances, if any, under which the plan may be terminated or benefits may be amended or eliminated; a summary of any plan provisions governing the benefits, rights and obligations of participants and beneficiaries under the plan on termination of the plan or amendment or elimination of benefits under the plan, including, in the case of an employee pension benefit plan, a summary of any provisions relating to the accrual and the vesting of pension benefits under the plan upon termination; and a summary of any plan provisions governing the allocation and disposition of assets of the plan upon termination. Plans also shall include a summary of any provisions that may result in the imposition of a fee or charge on a participant or beneficiary, or on an individual account thereof, the payment of which is a condition to the receipt of benefits under the plan. The foregoing summaries shall be disclosed in accordance with the requirements under 29 CFR 2520.102-2(b).

(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 reason for the lack of insurance; and

(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 for a single-employer plan will be deemed to comply with paragraph (m)(2) of this section if it includes the following statement:

Your pension benefits under this plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. If the plan terminates (ends) without enough money to pay all benefits, the PBGC will step in to pay pension benefits. Most people receive all of the pension benefits they would have received under their plan, but some people may lose certain benefits.

The PBGC guarantee generally covers: (1) Normal and early retirement benefits; (2) disability benefits if you become disabled before the plan terminates; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) Benefits greater than the maximum guaranteed amount set by law for the year in which the plan terminates; (2) some or all of benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the time the plan terminates; (3) benefits that are not vested because you have not worked long enough for the company; (4) benefits for which you have not met all of the requirements at the time the plan terminates; (5) certain early retirement payments (such as supplemental benefits that stop when you become eligible for Social Security) that result in an early retirement monthly benefit greater than your monthly benefit at the plan's normal retirement age; and (6) non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

Even if certain of your benefits are not guaranteed, you still may receive some of those benefits from the PBGC depending on how much money your plan has and on how much the PBGC collects from employers.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street N.W., Suite 930, Washington, D.C. 20005-4026 or call 202-326-4000 (not a toll-free number). TTY/TDD users may call the federal relay service

toll-free at 1-800-877-8339 and ask to be connected to 202-326-4000. Additional information about the PBGC's pension insurance program is available through the PBGC's website on the Internet at <http://www.pbgc.gov>.

(4) A summary plan description for a multiemployer plan will be deemed to comply with paragraph (m)(2) of this section if it includes the following statement:

Your pension benefits under this multiemployer plan are insured by the Pension Benefit Guaranty Corporation (PBGC), a federal insurance agency. A multiemployer plan is a collectively bargained pension arrangement involving two or more unrelated employers, usually in a common industry.

Under the multiemployer plan program, the PBGC provides financial assistance through loans to plans that are insolvent. A multiemployer plan is considered insolvent if the plan is unable to pay benefits (at least equal to the PBGC's guaranteed benefit limit) when due.

The maximum benefit that the PBGC guarantees is set by law. Under the multiemployer program, the PBGC guarantee equals a participant's years of service multiplied by (1) 100% of the first \$5 of the monthly benefit accrual rate and (2) 75% of the next \$15. The PBGC's maximum guarantee limit is \$16.25 per month times a participant's years of service. For example, the maximum annual guarantee for a retiree with 30 years of service would be \$5,850.

The PBGC guarantee generally covers: (1) Normal and early retirement benefits; (2) disability benefits if you become disabled before the plan becomes insolvent; and (3) certain benefits for your survivors.

The PBGC guarantee generally does not cover: (1) Benefits greater than the maximum guaranteed amount set by law; (2) benefit increases and new benefits based on plan provisions that have been in place for fewer than 5 years at the earlier of: (i) The date the plan terminates or (ii) the time the plan becomes insolvent; (3) benefits that are not vested because you have not worked long enough; (4) benefits for which you have not met all of the requirements at the time the plan becomes insolvent; and (5) non-pension benefits, such as health insurance, life insurance, certain death benefits, vacation pay, and severance pay.

For more information about the PBGC and the benefits it guarantees, ask your plan administrator or contact the PBGC's Technical Assistance Division, 1200 K Street, N.W., Suite 930, Washington, D.C. 20005-4026 or call 202-326-4000 (not a toll-free number). TTY/TDD users may call the federal relay service toll-free at 1-800-877-8339 and ask to be connected to 202-326-4000. Additional informa-

tion about the PBGC's pension insurance program is available through the PBGC's website on the Internet at <http://www.pbgc.gov>.

(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 a group health plan, within the meaning of section 607(1) of the Act, subject to the continuation coverage provisions of Part 6 of Title I of ERISA, a description of the rights and obligations of participants and beneficiaries with respect to continuation coverage, including, among other things, information concerning qualifying events and qualified beneficiaries, premiums, notice and election requirements and procedures, and duration of coverage.

(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.

(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. If a health insurance issuer, within the meaning of section 733(b)(2) of the Act, is responsible, in whole or in part, for the financing or administration of a group health plan, the summary plan description shall indicate the name and address of the issuer, whether and to what extent benefits under the plan are guaranteed under a contract or policy of insurance issued by the issuer, and the nature of any administrative services (e.g., payment of claims) provided by the issuer.

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

(s) The procedures governing claims for benefits (including procedures for obtaining preauthorizations, approvals, or utilization review decisions in the case of group health plan services or benefits, and procedures for filing claim forms, providing notifications of benefit determinations, and reviewing denied claims in the case of any plan), applicable time limits, and 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). The plan's claims procedures may be furnished as a separate document that accompanies the plan's SPD, provided that the document satisfies the style and format requirements of 29 CFR 2520.102-2 and, provided further that the SPD contains a statement that the plan's claims procedures are furnished automatically, without charge, as a separate document.

(t)(1) The statement of ERISA rights described in section 104(c) of the Act, containing the items of information applicable to the plan included in the model statement of paragraph (t)(2) of this section. 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 shall 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 (t)(1) of this section if it includes the following statement; items of information which are not applicable to a particular plan should 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:

RECEIVE INFORMATION ABOUT YOUR PLAN AND BENEFITS

Examine, without charge, at the plan administrator's office and at other specified locations, such as worksites and union halls, all documents governing the plan, including insurance contracts and collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) filed by the plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Pension and Welfare Benefit Administration.

Obtain, upon written request to the plan administrator, copies of documents governing the operation of the plan, including insurance contracts and collective bargaining agreements, and copies of the latest annual report (Form 5500 Series) and updated summary plan description. 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.

Obtain a statement telling you whether you have a right to receive a pension at normal retirement age (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 every twelve (12) months. The plan must provide the statement free of charge.

CONTINUE GROUP HEALTH PLAN COVERAGE

Continue health care coverage for yourself, spouse or dependents if there is a loss of coverage under the plan as a result of a qualifying event. You or your dependents may

have to pay for such coverage. Review this summary plan description and the documents governing the plan on the rules governing your COBRA continuation coverage rights.

Reduction or elimination of exclusionary periods of coverage for preexisting conditions under your group health plan, if you have creditable coverage from another plan. You should be provided a certificate of creditable coverage, free of charge, from your group health plan or health insurance issuer when you lose coverage under the plan, when you become entitled to elect COBRA continuation coverage, when your COBRA continuation coverage ceases, if you request it before losing coverage, or if you request it up to 24 months after losing coverage. Without evidence of creditable coverage, you may be subject to a preexisting condition exclusion for 12 months (18 months for late enrollees) after your enrollment date in your coverage.

PRUDENT ACTIONS BY PLAN FIDUCIARIES

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.

ENFORCE YOUR RIGHTS

If your claim for a (pension, welfare) benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain copies of documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA, there are steps you can take to enforce the above rights. For instance, if you request a copy of plan documents or the latest annual report 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 \$110 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. In addition, if you disagree with the plan's decision or lack thereof concerning the qualified status of a domestic relations order or a medical child support order, you may file suit in 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.

ASSISTANCE WITH YOUR QUESTIONS

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, or if you need assistance in obtaining documents from the plan administrator, you should contact the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory or the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue N.W., Washington, D.C. 20210. You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

(u)(1) For a group health plan, as defined in section 733(a)(1) of the Act, that provides maternity or newborn infant coverage, a statement describing any requirements under federal or state law applicable to the plan, and any health insurance coverage offered under the plan, relating to hospital length of stay in connection with childbirth for the mother or newborn child. If federal law applies in some areas in which the plan operates and state law applies in other areas, the statement should describe the different areas and the federal or state law requirements applicable in each.

(2) In the case of a group health plan subject to section 711 of the Act, the summary plan description will be deemed to have complied with paragraph (u)(1) of this section relating to the required description of federal law requirements if it includes the following statement in the summary plan description:

Group health plans and health insurance issuers generally may not, under Federal law, restrict benefits for any hospital length of stay in connection with childbirth for the mother or newborn child to less than 48 hours following a vaginal delivery, or less than 96 hours following a cesarean section.

However, Federal law generally does not prohibit the mother's or newborn's attending provider, after consulting with the mother, from discharging the mother or her newborn earlier than 48 hours (or 96 hours as applicable). In any case, plans and issuers may not, under Federal law, require that a provider obtain authorization from the plan or the insurance issuer for prescribing a length of stay not in excess of 48 hours (or 96 hours).

(Approved by the Office of Management and Budget under control number 1210-0039)

[42 FR 37180, July 19, 1977, as amended at 62 FR 16984, Apr. 8, 1997; 62 FR 31695, June 10, 1997; 62 FR 36205, July 7, 1997; 63 FR 48375, Sept. 9, 1998; 65 FR 70241, Nov. 21, 2000; 66 FR 34994, July 2, 2001; 66 FR 36368, July 11, 2001]

§ 2520.102-4 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 § 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 § 2520.102-2, and shall contain all information which is required to be contained in the summary plan description under § 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 of the text contains a reference to the page or pages in the text which contain this information.

[67 FR 775, Jan. 7, 2002]

Subpart C—Annual Report Requirements

SOURCE: 43 FR 10140, Mar. 10, 1978, unless otherwise noted.

§ 2520.103-1 Contents of the annual report.

(a) *In general.* The administrator of a plan required to file an annual report in accordance with section 104(a)(1) of the Act shall include with the annual report the information prescribed in paragraph (a)(1) of this section or in the simplified report, 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.

(2) Under the authority of subsections 104(a)(2), 104(a)(3) and 110 of the Act, and section 1103(b) of the Pension Protection Act of 2006, a simplified report, limited exemption or alternative method of compliance is prescribed for employee welfare and pension benefit plans, as applicable. A plan filing a simplified report or electing the limited exemption or alternative method of compliance shall file an annual report containing the information prescribed in paragraph (b) or paragraph (c) of this section, as applicable, and shall furnish a summary annual report as prescribed in § 2520.104b-10.

(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) and paragraph (f) of this section and in §§ 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) of this section shall include:

(1) A Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule SB (Single-Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule R (Retirement Plan Information), and other financial schedules described in Sec. 2520.103-10. See the instructions for this form.

(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 § 2520.103-1(b)(5). These statements shall include the following:

(i) 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 the Form 5500; however, the assets and liabilities may be aggregated into categories in a manner other than that used on Form 5500.

(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.

(3) Notes to the financial statements described in paragraph (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 explanation of the differences, if any, between the information contained in the separate financial statements and the assets, liabilities, income, expenses and changes in the 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.

(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 to be furnished to the administrator by such account or trust under § 2520.103-5(c). Although the statement of assets and liabilities referred to in § 2520.103-5(c) shall be considered part of the plan’s annual report, such statement of assets and liabilities need not be filed with the plan’s annual report. See §§ 2520.103-3 and 2520.103-4 for reporting requirements for plans 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.

(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 §§ 2520.103-8 and 2520.103-12.

(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 (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.*

(1) Except as provided in paragraph (c)(2), paragraph (d) and paragraph (f) of this section, and in §§ 2520.104-43, 2520.104a-6, and 2520.104-44, the annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year shall include a Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required

to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule SB (Single Employer Defined Benefit Plan Actuarial Information), Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), Schedule D (DFE/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information). See the instructions for this form.

(2)(i) The annual report of an employee benefit plan that covers fewer than 100 participants at the beginning of the plan year and that meets the conditions in paragraph (c)(2)(ii) of this section with respect to a plan year may, as an alternative to the requirements of paragraph (c)(1) of this section, meet its annual reporting requirements by filing the Form 5500-SF "Short Form Annual Return/Report of Small Employee Benefit Plan" and any statements or schedules required to be attached to the form, including Schedule SB (Single Employer Defined Benefit Plan Actuarial Information) and Schedule MB (Multiemployer Defined Benefit Plan and Certain Money Purchase Plan Actuarial Information), completed in accordance with the instructions for the form. See the instructions for this form.

(ii) A plan meets the conditions in this paragraph (c)(2)(ii) with respect to the year if the plan:

(A) Does not hold any employer securities at any time during the year;

(B) Satisfies the audit waiver conditions in §§ 2520.104-46(b)(1)(i)(A)(1), (b)(1)(i)(B) and (b)(1)(i)(C);

(C) Had at all times during the plan year 100 percent of the plan's assets held for investment purposes invested in assets that have a readily determinable fair market value. For purposes of this section, the following shall be treated as assets that have a readily determinable fair market value: Shares issued by an investment company registered under the Investment Company Act of 1940; investment and annuity contracts issued by any insurance company, qualified to do business under the laws of a State, that provides valuation information at least

annually to the plan administrator; bank investment contracts issued by a bank or similar financial institution, as defined in §2550.408b-4(c) of this chapter, that provides valuation information at least annually to the plan administrator; securities (except employer securities) traded on a public exchange; government securities issued by the United States or by a State; cash or cash equivalents held by a bank or similar financial institution, as defined in §2550.408b-4(c) of this chapter, by an insurance company, qualified to do business under the law of a State, by an organization registered as a broker-dealer under the Securities Exchange Act of 1934, or by any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code; and any loan meeting the requirements of section 408(b)(1) of the Act and the regulations issued thereunder;

(D) Is not a multiemployer plan; and

(E) Is not a plan subject to the Form M-1 requirements under §2520.101-2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities).

(d) *Special rule.* If a plan has between 80 and 120 participants (inclusive) as of the beginning of the plan year, the plan administrator may elect to file the same category of annual report (*i.e.*, the annual report for plans with 100 or more participants under paragraph (b) of this section or the annual report for plans with fewer than 100 participants under paragraph (c) of this section) that was filed for the previous plan year.

(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 in accordance with the instructions for the form relating to master trusts and master trust investment accounts. 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).

(f) *Plans subject to the Form M-1 filing requirements under §2520.101-2.* The annual report of an employee welfare benefit plan that is subject to the Form M-1 requirements under §2520.101-2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities) during the plan year shall also include any statements or information required by the instructions to the Form 5500 relating to compliance with the Form M-1 filing requirements under §2520.101-2.

(g) *Electronic filing.* See §2520.104a-2 and the instructions for the Form 5500 “Annual Return/Report of Employee Benefit Plan” for electronic filing requirements. The plan administrator must maintain an original copy, with all required signatures, as part of the plan’s records.

[43 FR 10140, Mar. 10, 1978, as amended at 45 FR 51446, Aug. 1, 1980; 46 FR 61079, Dec. 15, 1981; 51 FR 41288, Nov. 13, 1986; 54 FR 8627, Mar. 1, 1989; 65 FR 21080, Apr. 19, 2000; 71 FR 41368, July 21, 2006; 72 FR 64727, Nov. 16, 2007; 78 FR 13796, Mar. 1, 2013]

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

(a) *General.* (1) A trust or other entity described in §2520.104-43(b) that files an annual report for purposes of §2520.104-43 shall include in such report the items set forth in paragraph (b) of this section.

(2) [Reserved]

(b) *Contents.* (1) A Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating

Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and the other financial schedules described in § 2520.103-10. See the instructions for this form.

(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 § 2520.103-2(b)(5). These financial statements shall include the following:

(i) 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.

(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.

(3) Notes to the financial statements described in paragraph (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.

(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 in a common or collective trust maintained by a bank, trust company 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 to be furnished by such account or trust under § 2520.103-5(c). Although the statement of assets and liabilities referred to in § 2520.103-5(c) shall be considered part of the group insurance arrangement's annual report, such statement of assets and liabilities need not be filed with its annual report. See §§ 2520.103-3 and 2520.103-4 for reporting requirements for plans 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, and see § 2520.104-43(b)(2) for when the terms "group insurance arrangement" or "trust or other entity" shall be, respectively, used in place of the terms "plan" and "plan administrator."

(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 § 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.

(c) *Electronic filing.* See § 2520.104a-2 and the instructions for the Form 5500 "Annual Return/Report of Employee Benefit Plan" for electronic filing requirements. The trust or other entity described in § 2520.104-43(b) filing under this section must maintain an original copy, with all required signatures, as part of its records.

[43 FR 10140, Mar. 10, 1978, as amended at 54 FR 8627, Mar. 1, 1989; 65 FR 21080, Apr. 19, 2000; 71 FR 41368, July 21, 2006]

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

(a) *General.* Under the authority of sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), 110 and 505 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 § 2520.104a-5 or § 2520.104a-6 the information described in paragraph (c) of this section. Such plan is not required to include in its annual report 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, and which invests in a common or collective trust that files a Form 5500 report in accordance with § 2520.103-9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of and net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and

disposition by the plan of units of participation in the common or collective trust.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a common or collective trust that does not file a Form 5500 report in accordance with § 2520.103-9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of the plan's allocable portion of the underlying assets and liabilities of the common or collective trust and the net investment gain or loss relating to the units of participation in the common or collective trust held by the plan; identifying information about the common or collective trust including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the common or collective trust and transactions involving the acquisition and disposition by the plan of units of participation in the common or collective trust.

[43 FR 10140, Mar. 10, 1978, as amended at 65 FR 21081, Apr. 19, 2000]

§ 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 sections 103(b)(3)(G), 103(b)(4), 104(a)(2)(B), 104(a)(3), 110 and 505 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 part of the annual report required to be filed under § 2520.104a-5 or § 2520.104a-6 the information described in paragraph (c) of this section. Such plan is not required to include in its annual report 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, and which invests in a pooled separate account that files a Form 5500 report in accordance with § 2520.103-9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of, and net investment gain or loss relating to, the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate accounts and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

(2) A plan which meets the requirements of paragraph (b) of this section, and which invests in a pooled separate account that does not file a Form 5500 report in accordance with § 2520.103-9, shall include in its annual report: information required by the instructions to Schedule H (Financial Information) or Schedule I (Financial Information—Small Plan) about the current value of the plan's allocable portion of the underlying assets and liabilities of the

pooled separate account and the net investment gain or loss relating to the units of participation in the pooled separate account held by the plan; identifying information about the pooled separate account including its name, employer identification number, and any other information required by the instructions to the Schedule D (DFE/Participating Plan Information); and such other information as is required in the separate statements and schedules of the annual report about the value of the plan's units of participation in the pooled separate account and transactions involving the acquisition and disposition by the plan of units of participation in the pooled separate account.

[43 FR 10140, Mar. 10, 1978, as amended at 65 FR 21081, Apr. 19, 2000]

§ 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) of the Act and § 2520.104a-5 or § 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 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) of the Act and § 2520.104a-5 or § 2520.104a-6;

(ii) Holds assets of a plan in a pooled separate account and files a Form 5500 report pursuant to § 2520.103-9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the separate account for the fiscal year of such account ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The Employer Identification Number (EIN) of the separate account, entity number required for purposes of completing the Form 5500 and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to § 2520.103-9(c) will be made for the separate account (for its fiscal year ending with or within the participating plan's plan year) on or before the filing due date for such account in accordance with the Form 5500 instructions, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a-5 or § 2520.104a-6;

(iii) Holds assets of a plan in a pooled separate account and does not file a Form 5500 report pursuant to § 2520.103-9 for the participating plan's plan year—

(A) 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 participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the separate account,

(C) The EIN of the separate account and any other identifying number assigned by the insurance carrier to the separate account,

(D) A statement that a filing pursuant to §2520.103-9(c) will not be made for the separate account for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the insurance carrier and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and §2520.104a-5 or §2520.104a-6.

(iv) Holds assets of a plan in a separate account which is not exempted from certain reporting requirements under §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 section 104(a)(1) of the Act and §2520.104a-5 or §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 that files a Form 5500 report pursuant to §2520.103-9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such trust ending with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust, entity number assigned for purposes of completing the Form 5500 and any other identifying number assigned by the bank, trust company, or similar institution,

(D) A statement that a filing pursuant to §2520.103-9(c) will be made for the common or collective trust (for its fiscal year ending with or within the participating plan's plan year) on or before the filing due date for such trust in accordance with the Form 5500 instructions, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and §2520.104a-5 or §2520.104a-6.

(ii) In a common or collective trust that does not file a Form 5500 report pursuant to §2520.103-9 for the participating plan's plan year—

(A) A copy of the annual statement of assets and liabilities of the common or collective trust for the fiscal year of such account that ends with or within the plan year for which the participating plan's annual report is made,

(B) A statement of the value of the plan's units of participation in the common or collective trust,

(C) The EIN of the common or collective trust and any other identifying number assigned by the bank, trust company or similar institution,

(D) A statement that a filing pursuant to §2520.103-9(c) will not be made for the common or collective trust for its fiscal year ending with or within the participating plan's plan year, and

(E) Upon request of the plan administrator, any other information that can be obtained from the ordinary business records of the bank, trust company or similar institution and that is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and §2520.104a-5 or §2520.104a-6.

(iii) In a trust which is not exempted from certain reporting requirements under §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) of the Act and § 2520.104a-5.

(iv) 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) of the Act and § 2520.104a-5 or § 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) of the Act and § 2520.104a-5 or § 2520.104a-6.

(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.

[43 FR 10140, Mar. 10, 1978, as amended at 65 FR 21082, Apr. 19, 2000]

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

(a) *General.* For purposes of preparing the schedule of reportable transactions described in § 2520.103-10(b)(6), and subject to the exceptions provided in §§ 2520.103-3, 2520.103-4 and 2520.103-12, with respect to individual transactions by a common or collective trust, pooled separate account, or a 103-12 investment entity, a reportable transaction includes any transaction or series of transactions described in paragraph (c) of this section.

(b) *Definitions.* (1)(i) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (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) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), with respect to schedules of reportable transactions for the initial plan year of a plan, “current value” shall mean the current value, as defined in section 3(26) of the Act, of plan assets at the end of a plan’s initial plan year.

(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 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.* (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 §§ 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.

(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 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 paragraph (c)(1)(iii) may include the following information for each issue in lieu of the information prescribed in paragraphs (d)(1)(i) through (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 purchases;

(iv) The total dollar value of such sales;

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

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

(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.

(f) *Special rule for certain participant-directed transactions.* Participant or beneficiary directed transactions under an individual account plan shall not be taken into account under paragraph (c)(1) of this section for purposes of preparing the schedule of reportable transactions described in this section. For purposes of this section only, a transaction will be considered directed by a

participant or beneficiary if it has been authorized by such participant or beneficiary.

[43 FR 10140, Mar. 10, 1978; 43 FR 14009, Apr. 4, 1978, as amended at 54 FR 8628, Mar. 1, 1989; 61 FR 33849, July 1, 1996; 65 FR 21082, Apr. 19, 2000]

§ 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 § 2520.103-5.

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

(a) *General.* Under the authority of sections 103(b)(4), 104(a)(3), 110 and 505 of the Act, an employee benefit plan, some or all of the assets of which are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103-3 and 2520.103-4, is relieved from including in its annual report information about the current value of the plan's allocable portion of assets and liabilities of the common or collective trust or pooled separate account and information concerning the individual transactions of the common or

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collective trust or pooled separate account, provided that the plan meets the requirements of paragraph (b) of this section, and, provided further, that the bank or insurance carrier which holds the plan's assets meets the requirements of paragraph (c) of this section.

(b) *Application.* A plan whose assets are held in a common or collective trust or a pooled separate account described in section 103(b)(3)(G) of the Act and §§ 2520.103-3 and 2520.103-4, provided the plan administrator, on or before the end of the plan year, provides the bank or insurance carrier which maintains the common or collective trust or pooled separate account with the plan number, and name and Employer Identification Number of the plan sponsor as will be reported on the plan's annual report.

(c) *Separate filing by common or collective trusts and pooled separate accounts.* The bank or insurance carrier which maintains the common or collective trust or pooled separate account in which assets of the plan are held shall file, in accordance with the instructions for the form, a completed Form 5500 "Annual Return/Report of Employee Benefit Plan" and any statements or schedules required to be attached to the form for the common or collective trust or pooled separate account, including Schedule D (DFE/Participating Plan Information) and Schedule H (Financial Information). See the instructions for this form. The information reported shall be for the fiscal year of such trust or account ending with or within the plan year for which the annual report of the plan is made.

(d) *Electronic filing.* See § 2520.104a-2 and the instructions for the Form 5500 "Annual Return/Report of Employee Benefit Plan" for electronic filing requirements. The bank or insurance company which maintains the common or collective trust or pooled separate account must maintain an original copy, with all required signatures, as part of its records.

[65 FR 21082, Apr. 19, 2000, as amended at 71 FR 41368, July 21, 2006]

§ 2520.103-10 Annual report financial schedules.

(a) *General.* The administrator of a plan filing an annual report pursuant to § 2520.103-1(a)(2) or the report for a group insurance arrangement pursuant to § 2520.103-2 shall, as provided in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan," 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.* (i) A schedule of all assets held for investment purposes at the end of the plan year (see § 2520.103-11) with assets aggregated and identified by:

(A) Identity of issue, borrower, lessor or similar party to the transaction (including a notation as to whether such party is known to be a party in interest);

(B) Description of investment including maturity date, rate of interest, collateral, par, or maturity value;

(C) Cost; and

(D) Current value, and, in the case of a loan, the payment schedule.

(ii) Except as provided in the Form 5500 and the instructions thereto, in the case of assets or investment interests of two or more plans maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(2) *Assets acquired and disposed within the plan year.* (i) A schedule of all assets acquired and disposed of within the plan year (see § 2520.103-11) with assets aggregated and identified by:

(A) Identity of issue, borrower, issuer or similar party;

(B) Descriptions of investment including maturity date, rate of interest, collateral, par, or maturity value;

(C) Cost of acquisitions; and

(D) Proceeds of dispositions.

(ii) Except as provided in the Form 5500 and the instructions thereto, in the case of assets or investment interests of two or more plans maintained in one trust, all entries on the schedule of assets held for investment purposes that relate to the trust shall be completed by including the plan's allocable portion of the trust.

(3) *Party in interest transactions.* A schedule of each transaction involving a person known to be a party in interest except do not include:

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

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

(iii) A transaction to which the exemptions of section 4975(c) or 4975(d) of the Internal Revenue Code (Title 26 of the United States Code) applies.

(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 § 2520.103-6.

(c) *Format requirements for certain schedules.* See the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan" as to the format requirement for the schedules referred to in paragraphs (b)(1), (b)(2) or (b)(6) of this section.

[65 FR 21083, Apr. 19, 2000]

§ 2520.103-11 Assets held for investment purposes.

(a) *General.* For purposes of preparing the schedule of assets held for investment purposes described in § 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 report is filed if that invest-

ment 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 § 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 § 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 § 2520.103-10(b)(5); or

(iv) The schedule of reportable transactions required by section 103(b)(3)(H) of the Act and § 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.

(d) *Special rule for certain participant-directed transactions.* Cost information may be omitted from the schedule of assets held for investment purposes for assets described in paragraphs (b)(1)(i) and (b)(1)(ii) of this section only with respect to participant or beneficiary directed transactions under an individual account plan. For purposes of this section only, a transaction will be considered directed by a participant or beneficiary if it has been authorized by such participant or beneficiary.

[43 FR 10140, Mar. 10, 1978, as amended at 65 FR 21083, Apr. 19, 2000]

§ 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 1 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 on or before the filing due date for the entity in accordance with the instructions to the Form 5500 Annual Return/Report. 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) of the Act and §§ 2520.104a-5 and 2520.104a-6.

(b) The following information must be filed regarding the entity described in paragraph (c) of this section:

(1) A Form 5500 “Annual Return/Report of Employee Benefit Plan” and any statements or schedules required to be attached to the form for such entity, completed in accordance with the instructions for the form, including Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and the schedules described in § 2520.103-10(b)(1) and (b)(2). See the instructions for this form. The information reported shall be for the fiscal year of such entity ending with or within the plan year for which the annual report of the plan is made.

(2) A report of an independent qualified public accountant regarding the financial statements and schedules described in paragraph (b)(1) of this section which meets the requirements of § 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 § 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 §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.

(f) *Electronic filing.* See §2520.104a-2 and the instructions for the Form 5500 “Annual Return/Report of Employee Benefit Plan” for electronic filing requirements. The entity described in paragraph (c) of this section must maintain an original copy, with all required signatures, as part of its records.

[51 FR 41287, Nov. 13, 1986, as amended at 65 FR 21083, Apr. 19, 2000; 71 FR 41368, July 21, 2006]

§ 2520.103-13 Special terminal report for abandoned plans.

(a) *General.* The terminal report required to be filed by the qualified termination administrator pursuant to §2578.1(d)(2)(viii) of this chapter shall consist of the items set forth in paragraph (b) of this section. Such report

shall be filed in accordance with the method of filing set forth in paragraph (c) of this section and at the time set forth in paragraph (d) of this section.

(b) *Contents.* The terminal report described in paragraph (a) of this section shall contain:

(1) Identification information concerning the qualified termination administrator and the plan being terminated.

(2) The total assets of the plan as of the date the plan was deemed terminated under §2578.1(c) of this chapter, prior to any reduction for termination expenses and distributions to participants and beneficiaries.

(3) The total termination expenses paid by the plan and a separate schedule identifying each service provider and amount received, itemized by expense.

(4) The total distributions made pursuant to §2578.1(d)(2)(vii) of this chapter and a statement regarding whether any such distributions were transfers under §2578.1(d)(2)(vii)(B) of this chapter.

(5) The identification, fair market value and method of valuation of any assets with respect to which there is no readily ascertainable fair market value.

(c) *Method of filing.* The terminal report described in paragraph (a) shall be filed:

(1) On the most recent Form 5500 available as of the date the qualified termination administrator satisfies the requirements in §2578.1(d)(2)(i) through §2578.1(d)(2)(vii) of this chapter; and

(2) In accordance with the Form’s instructions pertaining to terminal reports of qualified termination administrators.

(d) *When to file.* The qualified termination administrator shall file the terminal report described in paragraph (a) within two months after the end of the month in which the qualified termination administrator satisfies the requirements in §2578.1(d)(2)(i) through §2578.1(d)(2)(vii) of this chapter.

(e) *Limitation.* (1) Except as provided in this section, no report shall be required to be filed by the qualified termination administrator under part 1 of

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title I of ERISA for a plan being terminated pursuant to § 2578.1 of this chapter.

(2) Filing of a report under this section by the qualified termination administrator shall not relieve any other person from any obligation under part 1 of title I of ERISA.

[71 FR 20853, Apr. 21, 2006]

Subpart D—Provisions Applicable to Both Reporting and Disclosure Requirements

(The information collection requirements contained in subpart D were approved by the Office of Management and Budget under control number 1210-0016)

§ 2520.104-1 General.

The administrator of an employee benefit plan covered by part 1 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 1 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.

[41 FR 16962, Apr. 23, 1976]

§§ 2520.104-2—2520.104-3 [Reserved]

§ 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 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.

(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 predecessor 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, as well as the plan merger 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 § 2520.104b-30); and

(2) After the merger, the plan administrator, in all subsequent summary plan descriptions furnished pursuant to § 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 § 2520.104b-30).

[42 FR 37182, July 19, 1977, as amended at 67 FR 776, Jan. 7, 2002]

§§ 2520.104-5—2520.104-6 [Reserved]

§ 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 provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or 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 annual report and any terminal report, as required by section 104(b)(4) of the Act;

(3) Is not required to make copies of the 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. 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

(iii) Both;

(3) For which, in the case of an insured plan—

(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; and

(4) Which are not subject to the Form M-1 requirements under §2520.101-2 (Filing by Multiple Employer Welfare Arrangements and Certain Other Related Entities).

(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)(6)), and which 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 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 § 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).

[43 FR 10148, Mar. 10, 1978, as amended at 46 FR 5884, Jan. 21, 1981; 67 FR 776, Jan. 7, 2002; 78 FR 13796, Mar. 1, 2013]

§ 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 a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) 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 multiemployer plan as defined in section 3(37) of the Act and any regulations prescribed under the Act concerning section 3(37);

(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 uses a trust as 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)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), 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 of a trade association which provides benefits to employees of two or more unaffiliated employers, but not in connection with a multiemployer plan as defined in 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 each participating employer. 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 trade association holds the insurance

contracts. A trust 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 participating employers 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 this section applies because the conditions of paragraph (b) have been satisfied.

(2) Assume the same facts as paragraph (d)(1) of this section except that the premium payments for the insurance company are paid from the trust to an independent insurance brokerage firm acting as the agent of the insurance company. The trade association is the holder of the insurance contract. The plan 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 paragraph (d)(1) of this section, enlisting the help of the association in providing summary plan descriptions and necessary information. The exemption provided by this section applies.

(3) The facts are the same as paragraph (d)(1) of this section except the welfare plan has 125 participants at the beginning of the plan year. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104-43.

(4) The facts are the same as paragraph (d)(2) of this section except the welfare plan has 125 participants. The exemption provided by this section does not apply because the plan had 100 or more participants at the beginning of the plan year. See, however, § 2520.104-43.

(e) *Applicability date.* For purposes of paragraph (b)(3) of this section, the arrangement may continue to use an entity (such as a trade association) as the conduit for the payment of insurance premiums to the insurance company for reporting years of the arrangement beginning before January 1, 2001.

[43 FR 10149, Mar. 10, 1978, as amended at 65 FR 21084, Apr. 19, 2000; 67 FR 776, Jan. 7, 2002]

§ 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 1 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 prerequisites for enrolling in such course; and

(ii) A description of the procedure by which to enroll in such course.

(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, Employee

Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

[45 FR 15529, Mar. 11, 1980, as amended at 45 FR 27933, Apr. 25, 1980; 54 FR 8629, Mar. 1, 1989; 68 FR 16400, Apr. 3, 2003]

EFFECTIVE DATE NOTE: At 84 FR 27955, June 17, 2019, §2520.104-22 was amended by revising paragraph (c), effective Aug. 16, 2019. For the convenience of the user, the revised text is set forth as follows:

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

* * * * *

(c) The notice referred to in paragraph (a) of this section shall be filed with the Secretary electronically in accordance with the instructions published by the Department.

§ 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 1 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 1 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 1 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 report-

ing and disclosure provisions of part 1 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)(6) 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 1 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, Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, or by delivering it during normal working hours to the Employee Benefits Security Administration, Room N-1513, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC.

(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.

[40 FR 34533, Aug. 15, 1975, as amended at 54 FR 8629, Mar. 1, 1989; 67 FR 776, Jan. 7, 2002; 68 FR 16400, Apr. 3, 2003]

EFFECTIVE DATE NOTE: At 84 FR 27955, June 17, 2019, § 2520.104-23 was amended by revising paragraph (c), effective Aug. 16, 2019. For the convenience of the user, the revised text is set forth as follows:

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

* * * * *

(c) *Electronic filing of statement.* Statements referred to in paragraph (b) of this section shall be filed with the Secretary electronically in accordance with the instructions published by the Department.

* * * * *

§ 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 1 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 1 of title I of the Act, except for providing plan documents to the Secretary of Labor upon request as required by section 104(a)(6).

(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.

[40 FR 34533, Aug. 15, 1975, as amended at 67 FR 776, Jan. 7, 2002]

§ 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 1 of title I of the Act, except for providing plan documents to the Secretary upon request as required under section 104(a)(6) of the Act.

[40 FR 34533, Aug. 15, 1975, as amended at 67 FR 776, Jan. 7, 2002]

§ 2520.104-26 Limited exemption for certain unfunded 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 filing with the Secretary an annual report and furnishing a summary annual report to participants and beneficiaries. Such plans may use a simplified method of reporting and disclosure to comply with the requirement to furnish a summary plan description to participants and beneficiaries, as follows:

(1) 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 Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

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(2) In lieu of a summary plan description, the employee organization constitution or by-laws may be furnished in accordance with § 2520.104b-2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102-2 and 2520.102-3.

(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 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 1 of title I of the Act.

[42 FR 37184, July 19, 1977, as amended at 67 FR 776, Jan. 7, 2002]

§ 2520.104-27 Alternative method of compliance for certain unfunded 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 filing with the Secretary an annual report and 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 requirement to furnish a summary plan description to participants and beneficiaries receiving benefits, as follows:

(1) 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 Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

(2) In lieu of a summary plan description, the employee organization constitution or bylaws may be furnished in accordance with § 2520.104b-2 to participants and beneficiaries together with any supplement to such document necessary to meet the requirements of §§ 2520.102-2 and 2520.102-3.

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(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 1 of title I of the Act.

[42 FR 37184, July 19, 1977, as amended at 67 FR 777, Jan. 7, 2002]

§ 2520.104-28 [Reserved]

§ 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 the administrator of an employee pension or welfare benefit plan described in § 2520.103-1(d) may file the simplified annual report described in paragraph (c) of this section in lieu of the annual report described in § 2520.103-1(b).

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section shall file, in the manner described in § 2520.104a-5, a completed Form 5500 "Annual Return/Report of Employee Benefit Plan" including, if applicable, the information described in § 2520.103-1(f) or, to the extent eligible, a completed Form 5500-SF "Short Form Annual Return/Report of Small Employee Benefit Plan," and any required schedules or statements prescribed by the instructions to the applicable form, and, unless waived by

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§ 2520.104-44 or § 2520.104-46, a report of an independent qualified public accountant meeting the requirements of § 2520.103-1(b).

[43 FR 10150, Mar. 10, 1978, as amended at 45 FR 51446, Aug. 1, 1980; 54 FR 8629, Mar. 1, 1989; 65 FR 21084, Apr. 19, 2000; 65 FR 62973, Oct. 19, 2000; 78 FR 13796, Mar. 1, 2013]

§ 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)¹ the present value of all of the plan's liabilities for nonforfeitable 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.

[44 FR 5446, Jan. 26, 1979]

§ 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) 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 § 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 § 2520.103-2 has been filed with the Secretary of Labor in accordance with § 2520.104a-6 by the trust or other entity which is the holder of the group insurance contracts by which plan benefits are provided.

(2) For purposes of this section, the terms "group insurance arrangement" or "trust or other entity" shall be used in place of the terms "plan" and "plan administrator," as applicable, in

¹Schedule B was filed as part of the original document.

§§ 2520.103-3, 2520.103-4, 2520.103-6, 2520.103-8, 2520.103-9 and 2520.103-10.

(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.

[43 FR 10150, Mar. 10, 1978, as amended at 65 FR 21084, Apr. 19, 2000; 67 FR 777, Jan. 7, 2002]

§ 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.

(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) or (b)(3) 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 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. 300e-9(d), the premiums for which are paid directly by the employer or employee organization from its general

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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

(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 participants, such refunds are returned to them 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 annual report relating to financial information and transactions entered into by the plan as described in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan" and accompanying schedules;

(2) Engaging an independent qualified public accountant pursuant to section 103(a)(3)(A) of the Act and § 2520.103-1(b)

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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 § 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) of the Act and § 2520.104a-5.

(e) *Example*. A welfare plan which is funded entirely with insurance contracts and which meets all the requirements of exemption under § 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 § 2520.104-20, but is exempt from certain reporting requirements under § 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.

[43 FR 10150, Mar. 10, 1978, as amended at 45 FR 51446, Aug. 1, 1980; 46 FR 5884, Jan. 21, 1981; 65 FR 21085, Apr. 19, 2000; 67 FR 777, Jan. 7, 2002; 72 FR 64728, Nov. 16, 2007]

§ 2520.104-45 [Reserved]

§ 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)(i) The administrator of an employee pension benefit

plan for which simplified annual reporting has been prescribed in accordance with section 104(a)(2)(A) of the Act and § 2520.104-41 is not required to comply with the annual reporting requirements described in paragraph (c) of this section, provided that with respect to each plan year for which the waiver is claimed—

(A)(I) At least 95 percent of the assets of the plan constitute qualifying plan assets within the meaning of paragraph (b)(1)(ii) of this section, or

(2) Any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with the requirements of section 412 of the Act and the regulations issued thereunder, except that the amount of the bond shall not be less than the value of such assets;

(B) The summary annual report (described in § 2520.104b-10) or, in the case of plans subject to section 101(f) of the Act, the annual funding notice (described in § 2520.101-5), includes, in addition to any other required information:

(I) Except for qualifying plan assets described in paragraph (b)(1)(ii)(A), (B) and (F) of this section, the name of each regulated financial institution holding (or issuing) qualifying plan assets and the amount of such assets reported by the institution as of the end of the plan year;

(2) The name of the surety company issuing the bond, if the plan has more than 5% of its assets in non-qualifying plan assets;

(3) A notice indicating that participants and beneficiaries may, upon request and without charge, examine, or receive copies of, evidence of the required bond and statements received from the regulated financial institutions describing the qualifying plan assets; and

(4) A notice stating that participants and beneficiaries should contact the Regional Office of the U.S. Department of Labor's Employee Benefits Security Administration if they are unable to examine or obtain copies of the regulated financial institution statements or evidence of the required bond, if applicable; and

(C) in response to a request from any participant or beneficiary, the admin-

istrator, without charge to the participant or beneficiary, makes available for examination, or upon request furnishes copies of, each regulated financial institution statement and evidence of any bond required by paragraph (b)(1)(i)(A)(2).

(ii) For purposes of paragraph (b)(1), the term "qualifying plan assets" means:

(A) Qualifying employer securities, as defined in section 407(d)(5) of the Act and the regulations issued thereunder;

(B) Any loan meeting the requirements of section 408(b)(1) of the Act and the regulations issued thereunder;

(C) Any assets held by any of the following institutions:

(I) A bank or similar financial institution as defined in § 2550.408b-4(c);

(2) An insurance company qualified to do business under the laws of a state;

(3) An organization registered as a broker-dealer under the Securities Exchange Act of 1934; or

(4) Any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code.

(D) Shares issued by an investment company registered under the Investment Company Act of 1940;

(E) Investment and annuity contracts issued by any insurance company qualified to do business under the laws of a state; and,

(F) In the case of an individual account plan, any assets in the individual account of a participant or beneficiary over which the participant or beneficiary has the opportunity to exercise control and with respect to which the participant or beneficiary is furnished, at least annually, a statement from a regulated financial institution referred to in paragraphs (b)(1)(ii)(C), (D) or (E) of this section describing the assets held (or issued) by such institution and the amount of such assets.

(iii)(A) For purposes of this paragraph (b)(1), the determination of the percentage of all plan assets consisting of qualifying plan assets with respect to a given plan year shall be made in the same manner as the amount of the bond is determined pursuant to §§ 2580.412-11, 2580.412-14, and 2580.412-15.

(B) *Examples.* Plan A, which reports on a calendar year basis, has total assets of \$600,000 as of the end of the 1999 plan year. Plan A's assets, as of the end of year, include: investments in various bank, insurance company and mutual fund products of \$520,000; investments in qualifying employer securities of \$40,000; participant loans, meeting the requirements of ERISA section 408(b)(1), totaling \$20,000; and a \$20,000 investment in a real estate limited partnership. Because the only asset of the plan that does not constitute a "qualifying plan asset" is the \$20,000 real estate investment and that investment represents less than 5% of the plan's total assets, no bond would be required under the proposal as a condition for the waiver for the 2000 plan year. By contrast, Plan B also has total assets of \$600,000 as of the end of the 1999 plan year, of which \$558,000 constitutes "qualifying plan assets" and \$42,000 constitutes non-qualifying plan assets. Because 7%—more than 5%—of Plan B's assets do not constitute "qualifying plan assets," Plan B, as a condition to electing the waiver for the 2000 plan year, must ensure that it has a fidelity bond in an amount equal to at least \$42,000 covering persons handling non-qualifying plan assets. Inasmuch as compliance with section 412 requires the amount of bonds to be not less than 10% of the amount of all the plan's funds or other property handled, the bond acquired for section 412 purposes may be adequate to cover the non-qualifying plan assets without an increase (*i.e.*, if the amount of the bond determined to be needed for the relevant persons for section 412 purposes is at least \$42,000). As demonstrated by the foregoing example, where a plan has more than 5% of its assets in non-qualifying plan assets, the bond required by the proposal is for the total amount of the non-qualifying plan assets, not just the amount in excess of 5%.

(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.

(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 §§ 2520.103-1, 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 § 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 to file a Form 5500 "Annual Return/Report of Employee Benefit Plan," including any required schedules or statements prescribed by the instructions to the form. See § 2520.104-41.

(2) For purposes of this section, an employee pension benefit plan for which simplified annual reporting has been prescribed includes an employee pension benefit plan which elects to file a Form 5500 as a small plan pursuant to § 2520.103-1(d) with respect to the plan year for which the waiver is claimed. See § 2520.104-41.

(3) For purposes of this section, an employee welfare benefit plan that covers fewer than 100 participants at the beginning of the plan year includes an employee welfare benefit plan which elects to file a Form 5500 as a small plan pursuant to § 2520.103-1(d) with respect to the plan year for which the waiver is claimed. See § 2520.104-41.

(4) A plan that elects to file a Form 5500 as a large plan pursuant to § 2520.103-1(d) may not claim a waiver under this section.

(e) *Model notice.* The appendix to this section contains model language for inclusion in the summary annual report to assist plan administrators in complying with the requirements of paragraph (b)(1)(i)(B) of this section to avail themselves of the waiver of examination and report of the independent qualified public accountant for employee benefit plans with fewer than 100 participants. Use of the model language is not mandatory. In order to use

the model language in the plan's summary annual report, administrators must, in addition to any other information required to be in the summary annual report, select among alternative language and add relevant information where appropriate in the model language. Items of information that are not applicable to a particular plan may be deleted. Use of the model language, appropriately modified and supplemented, will be deemed to satisfy the notice content requirements of paragraph (b)(1)(i)(B) of this section.

APPENDIX TO § 2520.104-46—MODEL SUMMARY ANNUAL REPORT NOTICE (PLAN ADMINISTRATORS WILL NEED TO MODIFY THE MODEL TO OMIT INFORMATION THAT IS NOT APPLICABLE TO THE PLAN)

The U.S. Department of Labor's regulations require that an independent qualified public accountant audit the plan's financial statements unless certain conditions are met for the audit requirement to be waived. This plan met the audit waiver conditions for the plan year beginning (insert year) and therefore has not had an audit performed. Instead, the following information is provided to assist you in verifying that the assets reported on the (Form 5500 or Form 5500-SF—select as applicable) were actually held by the plan.

At the end of the (insert year) plan year, the plan had (include separate entries for each regulated financial institution holding or issuing qualifying plan assets):

[Set forth amounts and names of institutions as applicable where indicated], [(insert \$ amount) in assets held by (insert name of bank)], [(insert \$ amount) in securities held by (insert name of registered broker-dealer)], [(insert \$ amount) in shares issued by (insert name of registered investment company)], [(insert \$ amount) in investment or annuity contract issued by (insert name of insurance company)].

The plan receives year-end statements from these regulated financial institutions that confirm the above information. [Insert as applicable—The remainder of the plan's assets were (1) qualifying employer securities, (2) loans to participants, (3) held in individual participant accounts with investments directed by participants and beneficiaries and with account statements from regulated financial institutions furnished to the participant or beneficiary at least annually, or (4) other assets covered by a fidelity bond at least equal to the value of the assets and issued by an approved surety company.]

Plan participants and beneficiaries have a right, on request and free of charge, to get copies of the financial institution year-end statements and evidence of the fidelity bond. If you want to examine or get copies of the

financial institution year-end statements or evidence of the fidelity bond, please contact [insert mailing address and any other available way to request copies such as e-mail and phone number].

If you are unable to obtain or examine copies of the regulated financial institution statements or evidence of the fidelity bond, you may contact the regional office of the U.S. Department of Labor's Employee Benefits Security Administration (EBSA) for assistance by calling toll-free 1.866.444.EBSA (3272). A listing of EBSA regional offices can be found at <http://www.dol.gov/ebsa>.

General information regarding the audit waiver conditions applicable to the plan can be found on the U.S. Department of Labor Web site at <http://www.dol.gov/ebsa> under the heading "Frequently Asked Questions."

[43 FR 10151, Mar. 10, 1978, as amended at 43 FR 14010, Apr. 4, 1978; 45 FR 51447, Aug. 1, 1980; 54 FR 8629, Mar. 1, 1989; 65 FR 21085, Apr. 19, 2000; 65 FR 62973, Oct. 19, 2000; 72 FR 64728, Nov. 16, 2007; 80 FR 5663, Feb. 2, 2015]

§ 2520.104-47 Limited exemption and alternative method of compliance for filing of insurance company financial reports.

An administrator of an employee benefit plan to 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.

[45 FR 14034, Mar. 4, 1980]

§ 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 1 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.

[45 FR 24869, Apr. 11, 1980]

§ 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 1 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:

A SEP that is created by proper use of Internal Revenue Service Form 5305-SEP, or; 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 participants for any period of time.

(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),

(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, SEP-IRA, or retirement bond, and how such a 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:

(A) January 31 of the year following the year for which a contribution is made,

(B) 30 days after a contribution is made, or

(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), (ii), (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

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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).

(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.

[46 FR 1264, Jan. 6, 1981]

§ 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;

(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.

[46 FR 1265, Jan. 6, 1981]

Subpart E—Reporting Requirements

(The information collection requirements contained in subpart E were approved by the Office of Management and Budget under control number 1210-0016)

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

(a) *General reporting requirements.* Part 1 of title I of the Act requires that the administrator of an employee benefit plan subject to the provisions of part 1 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.

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(b) *Exemption for certain welfare plans.* See §§ 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 § 2520.104-23.

[42 FR 37185, July 19, 1977]

§ 2520.104a-2 Electronic filing of annual reports.

(a) Any annual report (including any accompanying statements or schedules) filed with the Secretary under part 1 of title I of the Act for any plan year (reporting year, in the case of common or collective trusts, pooled separate accounts, and similar non-plan entities) beginning on or after January 1, 2009, shall be filed electronically in accordance with the instructions applicable to such report, and such other guidance as the Secretary may provide.

(b) Nothing in paragraph (a) of this section is intended to alter or affect the duties of any person to retain records or to disclose information to participants, beneficiaries, or the Secretary.

[71 FR 41368, July 21, 2006, as amended at 72 FR 64729, Nov. 16, 2007]

§§ 2520.104a-3—2520.104a-4 [Reserved]

§ 2520.104a-5 Annual reporting filing requirements.

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

(1) [Reserved]

(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.

(b) *Where to file.* The annual report described in § 2520.103-1 shall be filed in accordance with and at the address provided in the instructions to the Annual Return/Report Form.

[43 FR 10152, Mar. 10, 1978; 43 FR 14010, Apr. 4, 1978; 67 FR 777, Jan. 7, 2002]

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

(a) *General.* A trust or other entity described in § 2520.104-43(b) that files an annual report in accordance with the terms of subsections (b) and (c) shall be deemed to have filed such report in accordance with § 2520.104a-6 for purposes of § 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 § 2520.104-43 which begins in 1975 or December 15, 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.

(c) *Where to file.* The annual report prescribed in § 2520.103-2 shall be filed in accordance with and at the address provided in the instructions to the Annual Return/Report Form.

[43 FR 10152, Mar. 10, 1978; 43 FR 14010, Apr. 4, 1978]

§ 2520.104a-7 [Reserved]

§ 2520.104a-8 Requirement to furnish documents to the Secretary of Labor on request.

(a) *In general.* (1) Under section 104(a)(6) of the Act, the administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act is required to furnish to the Secretary, upon request, any documents relating to the employee benefit plan. For purposes of section 104(a)(6) of the Act, the administrator of an employee benefit plan shall furnish to the Secretary, upon service of a written request, a copy of:

(i) The latest updated summary plan description (including any summaries of material modifications to the plan or changes in the information required to be included in the summary plan description); and

(ii) Any other document described in section 104(b)(4) of the Act with respect to which a participant or beneficiary has requested, in writing, a copy from the plan administrator and which the

administrator has failed or refused to furnish to the participant or beneficiary.

(2) *Multiple requests for document(s).* Multiple requests under this section for the same or similar document or documents shall be considered separate requests for purposes of § 2560.502c-6(a).

(b) For purposes of this section, a participant or beneficiary will include any individual who is:

(1) A participant or beneficiary within the meaning of ERISA sections 3(7) and 3(8), respectively;

(2) An alternate payee under a qualified domestic relations order (see ERISA section 206(d)(3)(K)) or prospective alternate payee (spouses, former spouses, children or other dependents);

(3) A qualified beneficiary under COBRA (see ERISA section 607(3)) or prospective qualified beneficiary (spouse or dependent child);

(4) An alternate recipient under a qualified medical child support order (see ERISA section 609(a)(2)(C)) or a prospective alternate recipient; or

(5) A representative of any of the foregoing.

(c) *Service of request.* Requests under this section shall be served in accordance with § 2560.502c-6(i).

(d) *Furnishing documents.* A document shall be deemed to be furnished to the Secretary on the date the document is received by the Department of Labor at the address specified in the request; or, if a document is delivered by certified mail, the date on which the document is mailed to the Department of Labor at the address specified in the request.

[67 FR 784, Jan. 7, 2002]

Subpart F—Disclosure Requirements

(The information collection requirements contained in subpart F were approved by the Office of Management and Budget under control number 1210-0016)

§ 2520.104b-1 Disclosure.

(a) *General disclosure requirements.* The administrator of an employee benefit plan covered by Title I of the Act must disclose certain material, including reports, statements, notices, and other documents, to participants, bene-

ficiaries and other specified individuals. Disclosure under Title I of the Act generally takes three forms. 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.

(b) *Fulfilling the disclosure obligation.*

(1) Except as provided in paragraph (e) of this section, where certain material, including reports, statements, notices and other documents, is required under Title I of the Act, or regulations issued thereunder, to be furnished either by direct operation of law or on individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants, beneficiaries and other specified individuals. 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 worksite 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 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 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 worksite.

(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 the expected volume of inquiries. Plan administrators shall make copies of the 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 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 multiemployer plan which meets the definition of section 3(37) of the Act, §2510.3-37 of this chapter, and section 414(b) of the Internal Revenue Code of 1954 and 26 CFR 1.414(f) (40 FR 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) *Disclosure through electronic media.* (1) Except as otherwise provided by applicable law, rule or regulation, the administrator of an employee benefit plan furnishing documents through electronic media is deemed to satisfy the requirements of paragraph (b)(1) of this section with respect to an individual described in paragraph (c)(2) if:

(i) The administrator takes appropriate and necessary measures reasonably calculated to ensure that the system for furnishing documents—

(A) Results in actual receipt of transmitted information (e.g., using return-receipt or notice of undelivered elec-

tronic mail features, conducting periodic reviews or surveys to confirm receipt of the transmitted information); and

(B) Protects the confidentiality of personal information relating to the individual's accounts and benefits (e.g., incorporating into the system measures designed to preclude unauthorized receipt of or access to such information by individuals other than the individual for whom the information is intended);

(ii) The electronically delivered documents are prepared and furnished in a manner that is consistent with the style, format and content requirements applicable to the particular document;

(iii) Notice is provided to each participant, beneficiary or other individual, in electronic or non-electronic form, at the time a document is furnished electronically, that apprises the individual of the significance of the document when it is not otherwise reasonably evident as transmitted (e.g., the attached document describes changes in the benefits provided by your plan) and of the right to request and obtain a paper version of such document; and

(iv) Upon request, the participant, beneficiary or other individual is furnished a paper version of the electronically furnished documents.

(2) Paragraph (c)(1) shall only apply with respect to the following individuals:

(i) A participant who—

(A) Has the ability to effectively access documents furnished in electronic form at any location where the participant is reasonably expected to perform his or her duties as an employee; and

(B) With respect to whom access to the employer's or plan sponsor's electronic information system is an integral part of those duties; or

(ii) A participant, beneficiary or any other person entitled to documents under Title I of the Act or regulations issued thereunder (including, but not limited to, an "alternate payee" within the meaning of section 206(d)(3) of the Act and a "qualified beneficiary" within the meaning of section 607(3) of the Act) who—

(A) Except as provided in paragraph (c)(2)(ii) (B) of this section, has affirmatively consented, in electronic or non-

electronic form, to receiving documents through electronic media and has not withdrawn such consent;

(B) In the case of documents to be furnished through the Internet or other electronic communication network, has affirmatively consented or confirmed consent electronically, in a manner that reasonably demonstrates the individual's ability to access information in the electronic form that will be used to provide the information that is the subject of the consent, and has provided an address for the receipt of electronically furnished documents;

(C) Prior to consenting, is provided, in electronic or non-electronic form, a clear and conspicuous statement indicating:

(1) The types of documents to which the consent would apply;

(2) That consent can be withdrawn at any time without charge;

(3) The procedures for withdrawing consent and for updating the participant's, beneficiary's or other individual's address for receipt of electronically furnished documents or other information;

(4) The right to request and obtain a paper version of an electronically furnished document, including whether the paper version will be provided free of charge; and

(5) Any hardware and software requirements for accessing and retaining the documents; and

(D) Following consent, if a change in hardware or software requirements needed to access or retain electronic documents creates a material risk that the individual will be unable to access or retain electronically furnished documents:

(1) Is provided with a statement of the revised hardware or software requirements for access to and retention of electronically furnished documents;

(2) Is given the right to withdraw consent without charge and without the imposition of any condition or consequence that was not disclosed at the time of the initial consent; and

(3) Again consents, in accordance with the requirements of paragraph (c)(2)(ii)(A) or paragraph (c)(2)(ii)(B) of this section, as applicable, to the receipt of documents through electronic media.

(d) *Participant and beneficiary status for purposes of section 101(a) and 104(b)(1) of the Act and subpart F of this part.* See §§ 2510.3-3(d)(1), 2510.3-3(d)(2) and 2520.3-3(d)(3) of this chapter.

(e) *Limitations.* This section does not apply to disclosures required under provisions of part 2 and part 3 of the Act over which the Secretary of the Treasury has interpretative and regulatory authority pursuant to Reorganization Plan No. 4 of 1978.

(Approved by the Office of Management and Budget under control number 1210-0039)

[42 FR 37186, July 19, 1977, as amended at 62 FR 16985, Apr. 8, 1997; 62 FR 36205, July 7, 1997; 67 FR 777, Jan. 7, 2002; 67 FR 17275, Apr. 9, 2002]

§ 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 1 of title I shall furnish a copy of the summary plan description and a statement of ERISA rights as provided in § 2520.102-3(t), to each participant covered under the plan (as defined in § 2510.3-3(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 § 2520.104b-4(a), or,

(2) Within 120 days after the plan becomes subject to part 1 of title I.

(3)(i) A plan becomes subject to part 1 of title I on the first day on which an employee is credited with an hour of service under § 2530.200b-2 or § 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 1 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 1 of title I is the day after the day on which the condition is satisfied. Where a plan is made retroactively effective subject to a contingency which may or may not occur in the future, the day on which the plan becomes subject to part 1, 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 covering the employees of Company B, contingent on the successful conclusion of its negotiations to purchase 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.

(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 which occurs five years after the last date a change in 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 the 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 appli-

cable date described in paragraph (b)(1) 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 which occurs ten years after the last date a change in 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 the Act.

(c)-(f) [Reserved]

(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 paragraph (g)(2) of this section, the administrator of such plan is not required 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) [Reserved]

(i) *Style and format of the summary plan description.* See § 2520.102-2.

(j) *Contents of the summary plan description.* See § 2520.102-3.

(k) *Option for different summary plan descriptions.* See § 2520.102-4; § 2520.104-26; and § 2520.104-27.

(1) *Employee benefit plan—participant covered under a plan.* See § 2510.3-3(d).

[42 FR 37187, July 19, 1977, as amended at 45 FR 14032, Mar. 4, 1980; 48 FR 1714, Jan. 14, 1983; 61 FR 33849, 33850, July 1, 1996; 67 FR 777, Jan. 7, 2002]

§ 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 1 of title I of the Act shall, in accordance with § 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 § 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. Except as provided in paragraph (d) of this section, 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 §§ 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) *Special rule for group health plans—*
 (1) *General.* Except as provided in paragraph (d)(2) of this section, the administrator of a group health plan, as defined in section 733(a)(1) of the Act, shall furnish to each participant covered under the plan a summary, written in a manner calculated to be understood by the average plan participant, of any modification to the plan or change in the information required to be included in the summary plan description, within the meaning of paragraph (a) of this section, that is a material reduction in covered services or benefits not later than 60 days after the date of adoption of the modification or change.

(2) *90-day alternative rule.* The administrator of a group health plan shall not be required to furnish a summary of any material reduction in covered services or benefits within the 60-day period described in paragraph (d)(1) of this section to any participant covered under the plan who would reasonably

be expected to be furnished such summary in connection with a system of communication maintained by the plan sponsor or administrator, with respect to which plan participants are provided information concerning their plan, including modifications and changes thereto, at regular intervals of not more than 90 days and such communication otherwise meets the disclosure requirements of 29 CFR 2520.104b-1.

(3) “*Material reduction*”. (i) For purposes of this paragraph (d), a “material reduction in covered services or benefits” means any modification to the plan or change in the information required to be included in the summary plan description that, independently or in conjunction with other contemporaneous modifications or changes, would be considered by the average plan participant to be an important reduction in covered services or benefits under the plan.

(ii) A “reduction in covered services or benefits” generally would include any plan modification or change that: eliminates benefits payable under the plan; reduces benefits payable under the plan, including a reduction that occurs as a result of a change in formulas, methodologies or schedules that serve as the basis for making benefit determinations; increases premiums, deductibles, coinsurance, copayments, or other amounts to be paid by a participant or beneficiary; reduces the service area covered by a health maintenance organization; establishes new conditions or requirements (e.g., preauthorization requirements) to obtaining services or benefits under the plan.

(e) *Applicability date*. Paragraph (d) of this section is applicable as of the first day of the first plan year beginning after June 30, 1997.

(f)-(g) [Reserved]

(Approved by the Office of Management and Budget under control number 1210-0039)

[42 FR 37188, July 19, 1977, as amended at 62 FR 16985, Apr. 8, 1997; 62 FR 36205, July 7, 1997; 65 FR 70243, Nov. 21, 2000; 66 FR 34994, July 2, 2001; 67 FR 777, Jan. 7, 2002]

§ 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 § 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 separated participant”) if, no earlier than the date stated in paragraph (a)(4) of this section,

(1) In the case of a retired participant or a beneficiary receiving benefits, a document is furnished which—

(i) Meets the requirements of §§ 2520.102-2 and 2520.102-3 except paragraphs (b)(3), (b)(4), (j), (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 paragraph (a)(1)(iii) of this section; 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 §§ 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 separated 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 § 2520.102-2 (relating to the style and format of the summary plan description) and § 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 paragraph (a)(2)(i) of this section if the document omitted only information described in one or more of the provisions of § 2520.102-3 listed below, provided that a supplement containing such information, which meets the requirements of § 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 § 2520.102-3(c);

(B) Type of administration, as required by § 2520.102-3(e);

(C) Name of agent for service of legal process, as required by § 2520.102-3(g);

(D) Names and addresses of trustees, as required by § 2520.102-3(h);

(E) Statement regarding plan termination insurance as required by § 2520.102-3(m);

(F) Date of the end of the fiscal year, as required by § 2520.102-3(r); or

(G) Statement of ERISA rights, as required by § 2520.102-3(t).

(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 § 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 paragraph (b)(1)(ii) of this section, 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 paragraph (b)(1)(i) of this section 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 § 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 paragraph (b)(2)(i) of this section, 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 paragraph (b)(2)(ii) of this section 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 §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.

[45 FR 14032, Mar. 4, 1980, as amended at 61 FR 33850, July 1, 1996]

§ 2520.104b-10 Summary Annual Report.

(a) *Obligation to furnish.* Except as otherwise provided in paragraph (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 §2520.104b-1 of this part.

(b) [Reserved]

(c) *When to furnish.* Except as otherwise provided in this paragraph (c), the summary annual report required by paragraph (a) of this section shall be furnished within nine months after the close of the plan year.

(1) In the case of a welfare plan described in §2520.104-43 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 §2520.104a-6 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.

(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 paragraph (d)(3) of this section, 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 paragraph (d)(4) of this section. 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.*

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 Pension and Welfare Benefits Administration, 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 (\$).

[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 (\$).

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;
2. financial information and information on payments to service providers;
3. assets held for investment;
4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
5. loans or other obligations in default or classified as uncollectible;
6. leases in default or classified as uncollectible;
7. transactions in excess of 5 percent of the plan assets;
8. insurance information including sales commissions paid by insurance carriers;
9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103-12 investment entities in which the plan participates, and
10. 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, Room N-1513, Employee Benefits Security 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 Employee Benefits Security Administration, 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, 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 and 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.

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. financial information and information on payments to service providers;
3. assets held for investment;
4. fiduciary information, including non-exempt transactions between the plan and parties-in-interest (that is, persons who have certain relationships with the plan);
5. loans or other obligations in default or classified as uncollectible;
6. leases in default or classified as uncollectible;
7. transactions in excess of 5 percent of the plan assets;
8. insurance information including sales commissions paid by insurance carriers; and
9. information regarding any common or collective trusts, pooled separate accounts, master trusts or 103-12 investment entities in which the plan participates.

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

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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, Room N-1513, Employee Benefits Security 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 par-

ticipants. The notice offering assistance shall clearly set forth any procedures participants must follow to obtain such assistance.

(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 paragraph (d) of this section.

(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);

(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;

(8) A dues financed pension plan which meets the requirements of 29 CFR 2520.104-27; and

(9) A plan to which title IV of the Act applies.

APPENDIX TO § 2520.104B-10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500-SF filer line items
A. PENSION PLAN:			
1. Funding arrangement	Form 5500-9a	Same	Not applicable.
2. Total plan expenses	Sch. H-2j	Sch. I-2j	Line 8h.
3. Administrative expenses ..	Sch. H-2i(5)	Sch. I-2h	Line 8f.
4. Benefits paid	Sch. H-2e(4)	Sch. I-2e	Line 8d.
5. Other expenses	Sch. H-Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I-2i	Line 8g.
6. Total participants	Form 5500-6f	Same	Line 5b.
7. Value of plan assets (net):	Sch. H-11 [Col. (b)]	Sch. I-1c [Col. (b)]	Line 7c [Col. (b)].
a. End of plan year.			
b. Beginning of plan year.	Sch. H-11 [Col. (a)]	Sch. I-1c [Col. (a)]	Line 7c [Col. (a)].
8. Change in net assets	Sch. H-Subtract 11 [Col. (a)] from 11 [Col. (b)].	Sch. I-Subtract 1c [Col. (a)] from Col. (b)].	Line 7c-Subtract Col. (a) from Col. (b).
9. Total income	Sch. H-2d	Sch. I-2d	Line 8c.

APPENDIX TO § 2520.104b-10—THE SUMMARY ANNUAL REPORT (SAR) UNDER ERISA: A CROSS-REFERENCE TO THE ANNUAL REPORT—Continued

SAR item	Form 5500 large plan filer line items	Form 5500 small plan filer line items	Form 5500-SF filer line items
a. Employer contributions.	Sch. H-2a(1)(A) & 2a(2) if applicable.	Sch. I-2a(1) & 2b if applicable.	Line 8a(1) if applicable.
b. Employee contributions.	Sch. H-2a(1)(B) & 2a(2) if applicable.	Sch. I-2a(2) & 2b if applicable.	Line 8a(2) & 8a(3) if applicable.
c. Gains (losses) from sale of assets.	Sch. H-2b(4)(C)	Not applicable	Not applicable.
d. Earnings from investments.	Sch. H-Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I-2c	Line 8b.
10. Total insurance premiums.	Total of all Schs. A-6b	Total of all Schs. A-6b	Not applicable.
11. Unpaid minimum required contribution (S-E plans) or Funding deficiency (ME plans):	Sch. SB-39	Same	Same.
a. S-E Defined benefit plans.			
b. ME Defined benefit plans.	Sch. MB-10	Same	Not applicable.
c. Defined contribution plans.	Sch. R-6c, if more than zero.	Same	Line 12d.
B. WELFARE PLAN			
1. Name of insurance carrier	All Schs. A-1(a)	Same	Not applicable.
2. Total (experience rated and non-experienced rated) insurance premiums.	All Schs. A-Sum of 9a(1) and 10a.	Same	Not applicable.
3. Experience rated premiums.	All Schs. A-9a(1)	Same	Not applicable.
4. Experience rated claims ..	All Schs. A-9b(4)	Same	Not applicable.
5. Value of plan assets (net):	Sch. H-11 [Col. (b)]	Sch. I-1c [Col. (b)]	Line 7c [Col. (b)].
a. End of plan year.			
b. Beginning of plan year.	Sch. H-11 [Col. (a)]	Sch. I-1c [Col. (a)]	Line 7c [Col. (a)].
6. Change in net assets	Sch. H-Subtract 11 [Col. (a)] from 11 [Col. (b)].	Sch. I-Subtract 1c [Col. (a)] from 1c [Col. (b)].	Line 7c-Subtract [Col. (a)] from 7c [Col. (b)].
7. Total income	Sch. H-2d	Sch. I-2d	Line 8c
a. Employer contributions.	Sch. H-2a(1)(A) & 2a(2) if applicable.	Sch. I-2a(1) & 2b if applicable.	Line 8a(1) if applicable.
b. Employee contributions.	Sch. H-2a(1)(B) & 2a(2) if applicable.	Sch. I-2a(2) & 2b if applicable.	Line 8a(2) if applicable.
c. Gains (losses) from sale of assets.	Sch. H-2b(4)(C)	Not applicable	Not applicable.
d. Earnings from investments.	Sch. H-Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d.	Sch. I-2c	Line 8b.
8. Total plan expenses	Sch. H-2j	Sch. I-2j	Line 8h.
9. Administrative expenses ..	Sch. H-2i(5)	Sch. I-2h	Line 8f.
10. Benefits paid	Sch. H-2e(4)	Sch. I-2e	Line 8d.
11. Other expenses	Sch. H-Subtract the sum of 2e(4) & 2i(5) from 2j.	Sch. I-2i	Line 8g.

[44 FR 19403, Apr. 3, 1979, as amended at 44 FR 31640, June 1, 1979; 47 FR 31873, July 23, 1982; 54 FR 8629, Mar. 1, 1989; 65 FR 21085, Apr. 19, 2000; 65 FR 35568, June 5, 2000; 68 FR 16400, Apr. 3, 2003; 72 FR 64729, Nov. 16, 2007; 80 FR 5663, Feb. 2, 2015]

§ 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, 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. Except where explicitly permitted under the Act, 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.

[41 FR 16964, Apr. 23, 1976, as amended at 41 FR 37575, Sept. 7, 1976; 75 FR 9342, Mar. 2, 2010]

Subpart G—Recordkeeping Requirements

§ 2520.107-1 Use of electronic media for maintenance and retention of records.

(a) *Scope and purpose.* Sections 107 and 209 of the Employee Retirement Income Security Act of 1974, as amended (ERISA), contain certain requirements relating to the maintenance of records for reporting and disclosure purposes and for determining the pension benefits to which participants and beneficiaries are or may become entitled. This section provides standards applicable to both pension and welfare plans concerning the use of electronic media for the maintenance and retention of records required to be kept under sections 107 and 209 of ERISA.

(b) *General requirements.* The record maintenance and retention requirements of sections 107 and 209 of ERISA are satisfied when using electronic media if:

(1) The electronic recordkeeping system has reasonable controls to ensure the integrity, accuracy, authenticity and reliability of the records kept in electronic form;

(2) The electronic records are maintained in reasonable order and in a safe and accessible place, and in such manner as they may be readily inspected or examined (for example, the recordkeeping system should be capable of indexing, retaining, preserving, retrieving and reproducing the electronic records);

(3) The electronic records are readily convertible into legible and readable paper copy as may be needed to satisfy reporting and disclosure requirements or any other obligation under Title I of ERISA;

(4) The electronic recordkeeping system is not subject, in whole or in part, to any agreement or restriction that would, directly or indirectly, compromise or limit a person's ability to comply with any reporting and disclosure requirement or any other obligation under Title I of ERISA; and

(5) Adequate records management practices are established and implemented (for example, following procedures for labeling of electronically

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maintained or retained records, providing a secure storage environment, creating back-up electronic copies and selecting an off-site storage location, observing a quality assurance program evidenced by regular evaluations of the electronic recordkeeping system including periodic checks of electronically maintained or retained records, and retaining paper copies of records that cannot be clearly, accurately or completely transferred to an electronic recordkeeping system).

(c) *Legibility and readability.* All electronic records must exhibit a high degree of legibility and readability when displayed on a video display terminal or other method of electronic transmission and when reproduced in paper form. The term “legibility” means the

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observer must be able to identify all letters and numerals positively and quickly to the exclusion of all other letters or numerals. The term “readability” means that the observer must be able to recognize a group of letters or numerals as words or complete numbers.

(d) *Disposal of original paper records.* Original paper records may be disposed of any time after they are transferred to an electronic recordkeeping system that complies with the requirements of this section, except such original records may not be discarded if the electronic record would not constitute a duplicate or substitute record under the terms of the plan and applicable federal or state law.

[67 FR 17275, Apr. 9, 2002]