

## DEPARTMENT OF LABOR

Pension and Welfare Benefits  
Administration

## 29 CFR Part 2520

RIN 1210-AA52

Annual Reporting and Disclosure  
RequirementsAGENCY: Pension and Welfare Benefits  
Administration, Labor.

ACTION: Final rule.

**SUMMARY:** This document contains amendments to Department of Labor (Department) regulations relating to the annual reporting and disclosure requirements under part 1 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act). The amendments contained in this document are necessary to conform the regulations to revisions to the annual return/report forms (Form 5500 Series) intended to streamline the annual report required to be filed by administrators of employee pension and welfare benefit plans under part 1 of Title I of ERISA. The regulatory amendments, in conjunction with the revisions to the Form 5500 Series, which were published in the **Federal Register** on February 2, 2000, 65 FR 5026, are intended to reduce the annual reporting burdens on employee benefit plans while ensuring that the Department has access to the information it needs to carry out its administrative and enforcement responsibilities under ERISA and that participants and beneficiaries have access to the information they need to protect their rights and benefits under ERISA. Other amendments contained in this document modify the reporting requirements for certain group insurance arrangements. The remaining amendments are technical in nature and are designed to clarify existing reporting regulations. The amendments will affect the financial and other information required to be reported and disclosed by employee benefit plans filing Form 5500 Series reports under part 1 of Title I of ERISA.

**DATES:** *Effective Date:* This regulation is effective on May 19, 2000. The amendments generally apply to employee benefit plan years beginning on or after January 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration (PWBA), (202) 219-8515 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:****A. Background**

Under Titles I and IV of ERISA, and the Internal Revenue Code, as amended, pension and other employee benefit plans are generally required to file annual return/reports concerning, among other things, the financial condition and operations of the plan. These annual reporting requirements generally can be satisfied by filing the Form 5500 Series in accordance with its instructions and related regulations. The Form 5500 Series is the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. In addition to being an important disclosure document for plan participants and beneficiaries, the Form 5500 Series is a compliance and research tool for the Department, and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

On September 3, 1997, the Department in conjunction with the Internal Revenue Service and Pension Benefit Guaranty Corporation (the Agencies) published in the **Federal Register** (62 FR 46556) proposed changes to the Form 5500 Series. The Agencies received over 60 public comments and received oral testimony from employer groups, employee representatives, financial institutions, service organizations and others on the form streamlining proposal. In response to public comments, the Agencies made various adjustments to the proposed forms and instructions. Those comments and the changes in the forms and instructions are discussed in the notice of adoption of revised forms published separately on February 2, 2000, in the **Federal Register** (65 FR 5026).

As part of the development of the revised Form 5500 Series, the Department published in the **Federal Register** (63 FR 68370), on December 10, 1998, proposed amendments to the annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) which were necessary to implement certain of the proposed changes to the Form 5500 Series. A number of technical amendments to the regulations were also proposed in order to update certain of the reporting and disclosure regulations. In the December 10, 1998 notice, the Department stated that the public comments submitted in response to the September 3, 1997 Notice of proposed forms revisions would be treated as part of the public record for

the Notice of proposed rulemaking, and, to the extent those comments included information relevant to the proposed regulatory amendments, the Department would treat those comments as comments on the Notice of proposed rulemaking to avoid the need to submit duplicate public comments. The Department received four comments in response to the December 10, 1998 notice.

The Department has decided, after reviewing the relevant comments on the proposed amendments and proposed form revisions, to adopt the proposed regulatory amendments largely as proposed with certain technical or clarifying changes.

**B. Discussion of the Final Regulation and Comments***1. Section 2520.103-1*

Section 2520.103-1 generally describes the content of the Form 5500 Series as a limited exemption and alternative method of compliance. One of the central changes announced in the September 3, 1997 Notice of proposed forms revisions for improving the Form 5500 Series was the development of one Form 5500 for use by both "large plan" filers (plans that previously could file the Form 5500) and "small plan" filers (plans that previously could file the Form 5500-C/R. The new Form 5500 was structured along the lines of tax returns familiar to individual and corporate taxpayers—a simple main form with basic information necessary to identify the plan for which the report is filed that guides each filer to those schedules applicable to the filer's specific type of plan. Although the Form 5500-C/R was eliminated, limited financial reporting options for small plans has been preserved.<sup>1</sup> To accommodate these form changes, the regulatory amendments to § 2520.103-1 update the references to the annual report in that section to reflect the new structure and components of the Form 5500 Series.<sup>2</sup>

*2. Section 2520.103-2*

Welfare plans participating in a group insurance arrangement (GIA) are exempt from filing individual annual reports under conditions set forth in

<sup>1</sup> For example, plans eligible to file as small plans that take advantage of the simplified reporting rules will continue to be exempt from the annual audit requirements contained in ERISA section 103 and will continue to be relieved of the obligation to file certain schedules required for large plan filers (e.g., Schedule C—Service Provider Information).

<sup>2</sup> The amendments also delete the cross-reference to obsolete § 2520.103-7. This provision was removed from the Code of Federal Regulations on July 1, 1996 (61 FR 33847).

§ 2520.104–43 provided that the trust, trade association, or other entity which holds the insurance contracts and acts as a conduit for the payment of insurance premiums files an annual report for the entire arrangement. Section 2520.103–2 prescribes the contents of the annual report for GIAs in order for the participating plans to be eligible for the exemption described in § 2520.104–43. The annual report required to be filed under § 2520.103–2 must contain a completed Form 5500, any required schedules and attachments, a report by an independent qualified public accountant (IQPA), and separate financial statements if prepared by the IQPA in order to form the opinion required by § 2520.103–2(b)(5). As with the changes adopted in § 2520.103–1, the regulatory amendments update the references in § 2520.103–2 to the annual report to reflect the new structure and components of the Form 5500 Series. The regulatory amendments also conform § 2520.103–2 to the amendments of §§ 2520.104–21 and 2520.104–43 (described in section B.7 of this preamble). Of particular note for GIAs is the addition of a new Schedule D (DFE/Participating Plan Information) to the Form 5500 Series. The Schedule D, which is described in more detail below, is primarily intended to serve as a multipurpose schedule for reporting certain information on relationships between plans and entities, including GIAs, that are classified as “direct filing entities” or DFEs.

3. *Sections 2520.103–3, 2520.103–4, 2520.103–9, 2520.103–12 and 2520.103–1(e)*

(a) Common/Collective Trusts (CCTs) and Pooled Separate Accounts (PSAs)

Section 2520.103–3 provides an exemption from certain annual reporting requirements for plan assets held in a CCT maintained by a bank, trust company or similar institution. Section 2520.103–4 provides a similar exemption for plan assets held in a PSA maintained by an insurance carrier. Pursuant to §§ 2520.103–3 and 2520.103–4, a plan investing in these entities generally is not required to include information regarding the individual transactions of the entity in the plan’s annual report. Rather, the plan must include in its annual report certain information regarding: (i) the current value of the plan’s units of participation in the CCT or PSA, (ii) transactions involving the acquisition and disposition of units of participation in the CCT or PSA, and (iii) a statement of the assets and liabilities of the CCT

or PSA. Further, the Department, pursuant to §§ 2520.103–3(c)(3) and 2520.103–4(c)(3), exempts plans and GIAs from filing a statement of the assets and liabilities of the CCT and/or PSA as part of their annual report if the bank, trust company, similar institution or insurance carrier sponsoring the CCT or PSA files directly with the Department a statement of assets and liabilities for the fiscal year of the CCT or PSA ending with or within the plan year for which the information is being filed, and a list of participating plans identified by employer identification number (EIN), plan number and name of plan sponsor. In such a case, the bank, trust company, similar institution or insurance carrier sponsoring the CCT or PSA that files a statement of assets and liabilities directly with the Department must, within 120 days after the end of the plan year of the participating plan, transmit and certify the information needed by the plan administrator to file the annual report including, among other things, the CCT’s or PSA’s annual statement of assets and liabilities. See §§ 2520.103–5 and 2520.103–9(b)(3)(ii). In addition, the bank, trust company or insurance carrier sponsoring the CCT or PSA must furnish to the plan administrator a certification that a copy of its statement of assets and liabilities has been timely filed with the Department.

The absence of a standardized report for CCTs and PSAs to use in filing information directly with the Department has made it virtually impossible for the Department to correlate and effectively use the data regarding the plan assets held for investment by CCTs and PSAs. Further, the value of plan assets invested in CCTs and PSAs increased between 1990 and 1996, the latest year for which information is available, from \$113.9 billion to \$280 billion. The Department, accordingly, has concluded that a change in the current reporting rules is needed to enable it to continue to satisfy its research, disclosure and enforcement responsibilities.

Under the new Form 5500 Series and revised annual reporting regulations, as under the current Form 5500 Series and regulations, CCTs and PSAs may still elect to file information on behalf of their participating plans. Also, all CCTs and PSAs must notify participating plans within 120 days after the end of the plan year whether it intends to file a Form 5500 as a DFE, and furnish the plan administrator with the CCT’s or PSA’s statement of assets and liabilities as well as additional information about the assets held by such CCT or PSA needed by the plan administrator to

satisfy its reporting obligations under Title I of ERISA.

The major change in this area is the new requirement that CCTs and PSAs electing to file as DFEs must report information on the Form 5500 as the standardized reporting format for all filers. In the case of a CCT or PSA that elects to file as a DFE, the CCT or PSA must complete: (i) applicable items on the revised Form 5500; (ii) a Schedule D to list all participating plans at any time during the year and all CCTs, PSAs, or investment entities described in § 2520.103–12 (103–12 IEs) that such CCT or PSA invested in during the year; and (iii) a Schedule H (Financial Information) (formerly referred to as the Schedule FIN in the September 3, 1997 **Federal Register** Notice of proposed forms revisions).

A large plan investing in one or more CCTs or PSAs that elect to file as a DFE may continue to include in its annual report, pursuant to revised §§ 2520.103–3 and 2520.103–4, the current value of its interest in these entities as a single entry on the appropriate lines in the plan’s Schedule H (Financial Information) as of the beginning and end of the plan year. A large plan investing in a CCT or PSA which files as a DFE also reports on the plan’s Schedule H income and expense statement the net investment gain/loss for each class of DFE as a single entry for each class of DFE. Schedule D (DFE/Participating Plan Information) must be attached to the plan’s Form 5500 to report information about the plan’s participation in all CCTs and PSAs, regardless of whether they file as DFEs.

In the case of small plans with CCT or PSA investments, regardless of whether the CCT or PSA files as a DFE, the small plan must file a Schedule D, but will report total assets and total income, respectively, on single line items of the small plan Schedule I financial statements without separate Schedule I financial statement reporting on CCT or PSA investments.

Thus, the reporting for large plans investing in CCTs and PSAs that elect to file as DFEs and for small plan filers has not changed significantly from the current reporting requirements. Similarly, except for the addition of Schedule H (Part II), generally the information that must be filed by a CCT or PSA that elects to file as a DFE would be substantially the same as the current reporting requirements.

Under revised §§ 2520.103–3 and 2520.103–4, if a CCT or PSA does not file a Form 5500 as a DFE, large employee benefit plans must break out their percentage interest in the underlying assets of the CCT or PSA and

report that interest as a dollar value in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information). The failure by a large plan to break out its allocated interest in a CCT or PSA on the asset and liability statement contained in Schedule H when the CCT or PSA does not file as a DFE will be considered a failure by the plan administrator to file a complete Form 5500. The Department does not envision this as imposing a substantial additional burden on large plan filers because there is only a small number of general investment categories on the Schedule H (for example, interest bearing cash; U.S. government securities; corporate debt instruments; corporate stock; partnership/joint venture interests; real estate; loans; registered investment companies; other assets; and employer securities) such that the currently required asset and liability statement of the CCT or PSA should provide for many filers most of the detail needed to break the assets and liabilities into these categories. Also, large plan filers investing in CCTs and PSAs that do not file as DFEs may still report the net investment gain/loss with respect to their participation in a CCT or PSA as part of single entries on Part II of the Schedule H (income and expense statement) and will continue to report their interest in a CCT or PSA on the Form 5500 financial schedules (other than Part I of Schedule H) in the same general manner as under current rules (e.g., current value of the units of participation in CCTs and PSAs will be reported on the schedule of assets held for investment and the Schedule D).

The Department believes that these changes to the reporting requirements for plans investing in CCTs and PSAs is the best available alternative for effectively capturing the information needed to carry out the Department's oversight responsibilities about the substantial amount of plan assets held by CCTs and PSAs, while ensuring that there is adequate disclosure regarding those plan investments to plan participants and beneficiaries. The Department, therefore, is exercising its regulatory authority under sections 103(b)(4), 104(a)(3), 110 and 505 to modify the reporting requirements with respect to plans that participate in CCTs and PSAs.

Some commentators stated that substantial lead time would be needed by CCTs and PSAs to prepare for the new reporting requirements and suggested delaying the implementation year. As discussed in the Notice of Adoption of Revised Forms published separately on February 2, 2000, in the

**Federal Register** (65 FR 5026), to facilitate the transition to the new reporting rules for DFEs, the Department is clarifying the due date for Form 5500 DFE filings and adopting a transitional reporting rule for DFEs, other than GIAs, and for plans participating in DFEs, other than GIAs. First, as to the due date, inasmuch as the DFE filing continues to be considered an integral part of the annual report of each participating plan, the plan's annual report will continue to be treated as not complete unless the DFE information is filed within the prescribed time. The regulatory amendments clarify that, as with the current rule for statements of assets and liabilities, the DFE Form 5500 filing should pertain to the DFE fiscal year ending with or within the plan year. For example, if a DFE fiscal year begins on July 1 and ends on June 30, and the plan year begins on January 1 and ends on December 31, the DFE's 1999 Form 5500 filing should be for the fiscal year of the DFE ending on June 30, 1999. The regulatory amendments also establish the filing due date for all DFEs, other than GIAs, as no later than 9½ months after the end of the DFE's fiscal year.<sup>3</sup> This structure is intended to provide a simple and predictable filing deadline for DFEs while also ensuring that all DFE filings will be due on or before the latest possible due date for the annual report of any participating plan.

Second, the transitional rule applies to plans participating in CCTs or PSAs which do not elect to file as a DFE for their fiscal year ending in 1999. The transitional rule waives for the 1999 plan year the requirement that large plan filers break out their percentage interest in the underlying assets of the CCT or PSA that do not file as DFEs as dollar value entries in the appropriate categories on the asset and liability statement contained in Schedule H (Financial Information). Rather, for the 1999 plan year, plans may report their interest in the CCT or PSA on the aggregate amount lines of the plan's asset and liability statement (i.e., lines 1c(9) and 1c(10) of Schedule H) as of the beginning and end of the plan year even if the CCT or PSA does not file a Form 5500 as a DFE. Plans participating in a CCT or PSA also are not required to

<sup>3</sup> The Department did not extend the filing due date for GIAs (i.e., due no later than the last day of the seventh calendar month after the end of the GIA fiscal year) because the GIA filing is in lieu of the plan's filing rather than supplementing the plan's filing (as is the case of filings made by CCTs, PSAs, master trusts and 103-12 IEs). GIAs, however, are able to obtain the filing extension that is available to plans (i.e., 2½ months by timely filing an IRS Form 5558).

attach the CCT's or PSA's statement of assets and liabilities to its 1999 filing.

#### (b) Master Trusts and 103-12 Investment Entities

Section 2520.103-1(e) provides for special reporting rules for plans that participate in master trusts. In general, a master trust is a trust maintained by a bank, trust company or similar regulated financial institution to hold the assets of more than one plan sponsored by a single employer or by a group of employers under common control. Such plans must report the value of their interest in the master trusts as a single asset category in the plan's statement of assets and liabilities. The plan's share of master trust earnings, and realized and unrealized gains and losses is reported in the plan's statement of income, expenses and changes in net assets for the plan year. Under current rules, a separate annual report for each master trust is required to include certain information such as the statement of assets and liabilities, income and expense statement, service provider information, five percent reportable transactions schedule and schedule of assets held for investment, all of which are required to be separately reported for each master trust investment account. The amendments to § 2520.103-1(e) generally do not change the information required to be reported regarding the master trust and the related master trust investment accounts, but rather establish the Form 5500 Series as the standardized annual reporting format for each master trust investment account.

Section 2520.103-12 provides an exemption and alternative method of reporting for plans investing in certain investment entities the assets of which are deemed to include plan assets under § 2510.3-101. Specifically, if the 103-12 IE files certain information directly with the Department, the plan administrator is not required to include in the plan's annual report information regarding the underlying assets and individual transactions of the 103-12 IE. Instead, the administrator may report regarding the plan's investment or units of participation in the investment entity. The amendments to § 2520.103-12(b) do not change the information required to be reported by the 103-12 IE, but rather establish the Form 5500 Series as the standardized reporting format.

#### 4. Section 2520.103-5

Section 2520.103-5 implements for certain annual reporting purposes the requirement in section 103(a)(2) of the Act under which insurance carriers or other organizations which provide some

or all of the benefits under a plan or hold plan assets, banks or similar institutions which hold plan assets, and plan sponsors<sup>4</sup> must transmit and certify to the accuracy and completeness of such information as is needed by the plan administrator to comply with the requirements of Title I of the Act. Because the filing requirements for employee benefit plans participating in a CCT or PSA generally will be affected by whether such CCT or PSA directly files as a DFE, § 2520.103-5 has been amended to clarify the notice and information obligations CCT and PSA sponsors have to plan administrators.

In the case of a CCT or PSA, the amendments require that such CCT or PSA notify its participating plans whether it intends to file a Form 5500 as a DFE, and to furnish the plan administrator with the information about the assets held by such CCT or PSA, respectively, needed by the plan administrator to satisfy its obligations under Title I of ERISA. The notification must be provided within the same period of time already required by § 2520.103-5 (i.e., 120 days after the close of each participating plan's plan year). Revised § 2520.103-5 does not contain detailed rules relating to the manner of the exchange of information between the plan and the CCT or PSA. Rather, plan administrators should develop with the sponsors of the CCT or PSA a suitable procedure whereby the plan administrator can establish to his or her satisfaction that the administrator and the Department will receive all of the required information in a timely fashion. The plan administrator, however, continues to be responsible for monitoring the conduct of the CCT or PSA sponsor and ultimately may be subject to Title I annual reporting penalties if the plan's annual report is rejected because the CCT or PSA failed to meet its commitment to file a DFE Form 5500 or because of defects in the DFE information filed by the CCT or PSA.

#### *5. Section 2520.103-6 and Section 2520.103-11*

Section 2520.103-6 sets forth the definition of reportable (5%) transactions for the Form 5500, and section 2520.103-11 provides rules for preparing the schedule of assets held for investment purposes and the schedule of assets held for investment purposes that were both acquired and disposed of within the same plan year (hereinafter collectively referred to as the schedules

of assets held for investment purposes). The proposed regulations would have amended the reportable transactions rules to no longer require that participant directed transactions under an individual account plan be reported on the schedule of reportable transactions. Similarly, the proposed amendments to § 2520.103-11 would have eliminated for such participant directed assets the requirement to prepare the "historical cost" entry on the schedules of assets held for investment purposes. The amendments would not have relieved the administrator from including in the schedules of assets held for investment purposes descriptions and current values for assets held at a participant's or beneficiary's direction. The amendments are being adopted largely as proposed.

Sections 2520.103-6 and 2520.103-11, as amended, provide that, solely for purposes of the reporting relief for participant directed transactions, a transaction will be considered "directed" by a participant or beneficiary if it has been authorized by such participant or beneficiary. The Department in the final rule has modified the definition of the term "directed" by eliminating the requirement that the participant or beneficiary "affirmatively" authorize the transaction. The purpose of this change is to clarify that the term "directed" encompasses investments authorized through automatic enrollments, negative investment elections or default investment options under the terms of the plan instrument or instruments. This modification is intended to respond to comments that indicated the proposed reporting relief under §§ 2520.103-6 and 2520.103-11 would be ineffective if plan administrators were required to segregate such authorized transactions made without an "affirmative" direction from a participant or beneficiary. The Department notes, however, that these amendments do not affect the conditions for the fiduciary liability relief prescribed by § 2550.404c-1 which applies to a narrower class of transactions.

The Department is also amending § 2520.103-6 to include a special rule for the reportable transaction schedule for initial plan years. Section 2520.103-6(b)(1) currently requires calculation of the 5% thresholds for reportable transactions to be calculated using current value of assets as of the beginning of the plan year. Concerns have been expressed by filers that in the case of an initial plan year the current rule results in virtually all investment

transactions during such plan year as being reportable transactions under § 2520.103-6. The Department does not believe that this result was intended under ERISA inasmuch as the purpose of the reportable transaction rules is to identify transactions relating to a significant portion of the plan's assets because these transactions are likely to pose the greatest financial risk to a plan. Accordingly, the Department is amending § 2520.103-6 to provide that the current value of plan assets as of the end of the plan year can be used for preparing the schedule of reportable transactions for the initial plan year.

Although the schedule of reportable transactions and schedules of assets held for investment purposes continue to be required as part of the annual report, filers are allowed to continue to use the format prescribed by the instructions to the Form 5500 or a similar format for preparing the schedules as long as the content requirements of §§ 2520.103-6 and 2520.103-11 are met and the same size paper as the Form 5500 is used.

#### *6. Section 2520.103-10*

Section 2520.103-10 identifies the separate financial schedules that are required to be included in the annual report filed for a plan under § 2520.103-1(a)(2) or a GIA under § 2520.103-2. The Department is amending § 2520.103-10 to update references to the annual report financial schedules to the schedules associated with the new Form 5500. Further, § 2520.103-10 is being amended to reflect the fact that under the new Form 5500 the use of the revised Schedule G is mandatory for large plans, master trust investment accounts, 103-12 IEs and GIAs required to report a schedule of party in interest transactions, a schedule of loans and fixed income obligations in default, and/or a schedule of leases in default. These schedules, through the 1998 plan year, could be filed on the Schedule G or by using a similar format and using the same size paper as the current Schedule G.

#### *7. Section 2520.104-21 and Section 2520.104-43*

Sections 2520.104-21 and 2520.104-43 provide an exemption from certain Title I reporting and disclosure requirements for welfare plans that are part of a GIA, as defined in paragraph (b) of section 2520.104-21, if the GIA files a Form 5500 Series annual report on behalf of all the participating plans. The annual reporting exemption is available if the arrangement, among other things, uses a trust (or other entity such as a trade association) as the

<sup>4</sup> Neither the new Form 5500 nor these regulatory amendments change the plan sponsors' obligations described in § 2520.103-5.

holder of the insurance contracts and the conduit for payment of premiums to an insurance company. See §§ 2520.104–21(b)(3) and 2520.104–43. The amendments to §§ 2520.104–21 and 2520.104–43 provide that the reporting exemption is available only in those cases in which the GIA utilizes a trust as the conduit for the payment of the premiums. The amendments also modify the examples in paragraph (d) of § 2520.104–21 to reflect that change. In the Department's view, clarifying the trust requirement in the reporting exemption for GIAs conforms it with section 403 of ERISA and § 2550.403a–1, which do not provide a trust exception for GIAs.<sup>5</sup> The Department does not envision that the amendments will create administrative burdens for GIAs or result in increased costs for participating plans because the plan assets already must be separately accounted for and subjected to an annual audit by an IQPA. However, the Department has adopted a delayed applicability date to allow a transition period for GIAs that currently do not use a trust. Specifically, the requirement that GIAs must use a trust as the conduit for the payment of all insurance premiums to the insurance company, for purposes of the reporting exemption described in §§ 2520.104–21 and 2520.104–43, applies beginning with the first reporting year commencing on or after January 1, 2001.

#### 8. Sections 2520.104–41 and 2520.104–46

Section 2520.104–41 provides a simplified method of annual reporting for plans with fewer than 100 participants and § 2520.104–46 waives the IQPA requirement for such small plans. In general, small plans eligible to file simplified reports are currently required to file the Form 5500–C every third plan year and the Form 5500–R (an abbreviated version of the Form 5500–C) for the two intervening plan years. As indicated previously, the Agencies are replacing the Form 5500 and the Form 5500–C/R with a single Form 5500 for use by all filers, with simplified reporting options for small plans being incorporated into the structure and components of the new Form 5500. The final rule amends

§§ 2520.104–41 and 2520.104–46 to conform the terms used in the regulations to the new Form 5500.

#### 9. Section 2520.104–44

Section 2520.104–44 contains a limited exemption and alternative method of compliance for annual reporting by certain unfunded and insured plans. The current Form 5500 Series instructions provide for limited reporting for pension plans exclusively using a tax deferred annuity arrangement under Internal Revenue Code section 403(b)(1) and/or a custodial account for regulated investment company stock under Internal Revenue Code section 403(b)(7). The Department has previously expressed its view that such plans are not subject to the IQPA audit requirements as part of their annual reporting obligations under Title I of ERISA. The Department is adopting a technical amendment to § 2520.104–44 to clarify the availability of this exemption.

#### 10. Section 2520.104b–10

Section 2520.104b–10 sets forth the requirements for the summary annual report (SAR) and prescribes formats for such reports. The amendments to section 2520.104b–10 conform the SAR requirements to the new Form 5500 Series. For example, the amendments restate the information listed in §§ 2520.104b–10(d)(3) and 2520.104b–10(d)(4) that is available to participants and beneficiaries under the heading “Your Rights to Additional Information” so that it is consistent with the new Form 5500 Series.

The amendments also address the elimination of the Form 5500–R. Under current SAR rules, administrators of small plans are not required to prepare and furnish a SAR for those plan years in which a Form 5500–R is filed if one of the two following methods of compliance is met. Under the first method of compliance, plans must furnish participants (and beneficiaries receiving benefits under a pension plan) with a copy of the filed Form 5500–R as a substitute for furnishing the SAR. Under the second method, plans are required to notify participants and such beneficiaries in writing of their right upon written request to receive free-of-charge a copy of the Form 5500–R filed by the plan. Under the second method of compliance, § 2520.104b–10(b)(2)(ii) permits active participants to be notified by posting the notice at worksite locations in a manner reasonably calculated to ensure disclosure of the information. The Form 5500–R furnished under either method of

compliance must be accompanied by a prescribed notice. Because the Form 5500–R has been eliminated, small plans will be required to furnish a SAR every year.

In order to facilitate compliance with the SAR requirement, the Department also updated its cross-reference guide to correspond to the line items of the SAR to the relevant line items on the new Form 5500 and/or schedules. The cross-reference guide, as before, continues to be an appendix to § 2520.104b–10.

### C. Findings Regarding the New Form 5500 as a Limited Exemption and Alternative Method of Compliance

Section 104(a)(2)(A) of the Act authorizes the Secretary of Labor (Secretary) to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I of ERISA or to provide simplified reporting and disclosure, if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of ERISA and it provides adequate disclosure to plan participants and beneficiaries, and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and IQPA report) generally constitutes compliance with the limited exemption and alternative method of compliance in 29 CFR 2520.103–1(b). The findings required under ERISA sections 104(a)(3) and 110 relating to the use of the Form 5500, as revised, as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA are addressed below.

#### 1. General Findings

In adopting revisions to the Form 5500 Series and the amendments in this final rule, the Department attempted to

<sup>5</sup> ERISA Technical Release 92–01 (57 FR 23272 and 58 FR 45359) announced interim relief from the trust and certain reporting requirements of ERISA for certain contributory welfare plans. Cafeteria plans of the individual employers participating in a GIA may continue to rely on the trust relief in Technical Release 92–01. Technical Release 92–01, however, is not available to GIAs or to participant contributions after they have been segregated from an employer's general assets and transmitted to the GIA.

balance the needs of participants, beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government. The Department makes the following findings under sections 104(a)(3) and 110 of the Act with regard to the utilization of the revised Form 5500 (and revised statements and schedules required to be attached to the Form 5500) as an alternative method of compliance and limited exemption pursuant to 29 CFR 2520.103-1(b).

The use of the revised Form 5500 as an alternative method of compliance is consistent with the purposes of Title I of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary. While the information required to be reported on or in connection with the revised Form 5500 deviates, in some respects, from that delineated in section 103 of the Act, the information essential to ensuring adequate disclosure and reporting under Title I is required to be included on or as part of the Form 5500, as revised.

The use of Form 5500 as an alternative method of compliance relieves plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general. The Form 5500, as revised, is intended to further reduce the administrative burdens and costs attributable to compliance with the annual reporting requirements.

Taking into account the above, the Department has determined that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 would be adverse to the interests of participants in the aggregate. The revised Form 5500 provides for the reporting and disclosure of basic financial and other plan information described in section 103 in a uniform, efficient, and understandable manner, thereby facilitating the disclosure of such information to plan participants.

Finally, the Department has determined under section 104(a)(3) that a strict application of the statutory reporting requirements, without taking into account the revisions to the Form 5500, would be inappropriate in the context of welfare plans for the same reasons discussed in this section C (the streamlined form reduces filing burdens

without impairing enforcement, research and policy needs while at the same time providing adequate disclosure to participants and beneficiaries).

## 2. Special Findings

### (a) Schedule A (Insurance Information)

Schedule A must be attached to the annual report if any benefits under a plan that is subject to Title I of ERISA are provided by an insurance company, insurance service or other similar organization. Although most of the Schedule A data has been retained substantially unchanged, certain changes were made to conform the Schedule A to recent accounting industry changes on "current value" financial reporting of investment-type contracts with insurance companies,<sup>6</sup> and to collect: (i) better identifying information on the type of insurance contracts and type of insured benefits being reported and (ii) the insurer's employer identification number and National Association of Insurance Commissioners' (NAIC) code.

In the interest of the efficient administration of ERISA, the Department has attempted to align the reporting and disclosure requirements, where possible and to the extent consistent with the interests of plan participants, with generally accepted accounting principles (GAAP). The Schedule A changes adopted by the Department are intended to be consistent with the Financial Accounting Standards Board Statement of Financial Accounting Standards No. 110 (FAS 110) and No. 126 (FAS 126) and American Institute of Certified Public Accountants Statement of Position 94-4 (SOP 94-4), which generally require the disclosure of the fair value of investment contracts with insurance companies (except for certain investment contracts held by defined benefit pension plans and "fully benefit responsive" contracts held by defined contribution pension and welfare plans with assets of \$100 million or less). Because it is the Department's view that the Schedule A reporting requirements generally should be the same for small and large plans, the revised Form 5500 does not provide different Schedule A reporting standards depending on the size of the plan.

The Department also believes that the additional information required to be

<sup>6</sup> ERISA § 3(26) defines "current value" as "fair market value where available and otherwise the fair value as determined in good faith by a trustee or named fiduciary \* \* \* pursuant to the terms of the plan and in accordance with the regulations of the Secretary, assuming an orderly liquidation at the time of such determination."

reported on the Schedule A (i.e., reporting fees and commissions paid to persons other than agents and brokers, improved identification of the types of insurance products, the NAIC code, and the EIN of the insurance company (or similar organization)) is useful to the Department in accomplishing its oversight responsibilities, and should not be burdensome to plans inasmuch as it can be provided to plans at the same time the insurance company (or similar organization) furnishes the other information required by section 103(a)(2) and the related annual reporting regulations.

### (b) Schedule C (Service Provider Information)

Schedule C must be attached to the Form 5500 filed by large plan filers if any person received, directly or indirectly, \$5,000 or more in compensation from the plan for all services rendered to the plan during the plan year. The major changes to the Schedule C involve eliminating the requirement to annually identify plan trustees, limiting the current requirement to explain certain service provider terminations to terminations of accountants and enrolled actuaries, and limiting the number of plan service providers required to be individually reported to the forty top paid service providers at or above the \$5,000 threshold. The Department notes that trustee information already must be disclosed in the summary plan description (SPD), and changes in trustees must be disclosed in a summary of material modification (SMM). SPDs and SMMs must be furnished automatically, whereas the Form 5500 is required to be disclosed only on request. Further, although the reason for the termination will not be required to be reported in the case of other service provider terminations that previously were required to be reported, to the extent a service provider receives \$5,000 or more in compensation from the plan, comparing the list of service providers on Schedule Cs from year to year will allow a participant or beneficiary to determine whether a particular service provider (such as an investment manager, trustee, or custodian) was terminated. With respect to limiting of the Schedule C list of service providers to the forty top paid providers receiving \$5,000 or more in compensation, only 54 employee benefit plans filing the 1996 Form 5500 listed 40 or more service providers on their Schedule Cs. Those 54 filings constituted less than one percent of the Form 5500 filings received. These Schedule C changes will not, in the Department's view,

result in inadequate disclosure to participants and beneficiaries in large plans. Because Schedule C is not required to be filed by small plans, the Schedule C changes described herein would not affect the annual reports of those plans.

(c) Schedule D (DFE/Participating Plan Schedule)

As indicated previously, the new DFE reporting rules were developed in an effort to improve the reporting requirements for plans participating in CCTs, PSAs, master trusts, 103–12 IEs and GIAs. With the exception of the new requirement for small plans on the Schedule D to report year-end dollar value of interests in individual CCTs, PSAs, master trusts and 103–12 IEs, substantially all of the information that would be required to be reported by employee benefit plans under the new DFE reporting regime is currently required to be reported. Similarly, substantially all of the information that is required to be reported by DFEs is currently required to be filed by CCTs and PSAs that elect to file as DFEs as well as master trusts, 103–12 IEs and GIAs. Thus, the Department believes that the major change in reporting with respect to DFEs is that information must be reported in a standardized format using the Form 5500 and associated schedules.<sup>7</sup> The Department does not believe that the new DFE rules should result in material cost increases or administrative burdens for plans. Further, direct reporting by CCTs, PSAs, 103–12 IEs and GIAs continues to be optional. To the extent there are cost or burden increases being passed through to the plan by the entity, plans can evaluate those annual reporting implications when deciding whether to participate in a CCT, PSA, 103–12 IE or GIA. The information that is available to be disclosed to participants and beneficiaries under the current annual reporting regime would not be reduced under the new Form 5500. Finally, as indicated previously, continuation of the current rules would result in inadequate reporting to the Department, would mean that the Department would

continue to be unable to correlate and effectively use the data regarding the more than \$2 trillion in plan assets invested by plans in DFEs or entities eligible to file as DFEs, and, therefore, in the Department's view, would be adverse to the interests of participants and beneficiaries in the aggregate.

(d) Schedule of Reportable Transactions and Schedules of Assets Held for Investment Purposes

A major underlying purpose for the schedule of reportable transactions is to identify significant transactions that may reveal fiduciary misconduct. Information on the schedule of reportable transactions regarding participant directed transactions is not generally relevant to that purpose. Similarly, historical cost information on the schedules of assets held for investment purposes is intended to provide information on the investment gain/loss performance of the specific assets or classes of assets. The plan's aggregate gain or loss on a class of assets held as a result of collective participant direction generally does not provide meaningful information on the gain or loss to a particular participant's account resulting from individually directed transactions. In light of the purposes underlying the reporting requirements and the additional costs and administrative burdens to plans from having to include this participant directed transaction information in these schedules, the Department believes that the revisions to these schedules are in the interest of participants and beneficiaries, will provide adequate disclosure to plan participants and beneficiaries, and will provide adequate reporting to the Department.

### Other Supplementary Information

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a final rule is likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis at the time of the publication of the notice of final rulemaking describing the impact of the rule on small entities. Small entities include small businesses,

organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, the Pension and Welfare Benefits Administration (PWBA) considers a small entity to be an employee benefit plan with fewer than 100 participants. The basis for this definition is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans which cover fewer than 100 participants. Under section 104(a)(3), the Secretary may also provide for simplified annual reporting and disclosure if the statutory requirements of part 1 of Title I of ERISA would otherwise be inappropriate for welfare benefit plans. Pursuant to the authority of sections 104(a)(2) and 104(a)(3), the Department has previously issued certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans covering fewer than 100 participants and which satisfy certain other requirements.

The definition of small entity used for the purpose of regulatory flexibility analysis differs from a definition of small business based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (5 U.S.C. 631 *et seq.*). Because of this, PWBA consulted with the SBA's Office of Advocacy on the use of its definition for purposes of the RFA analysis, and sought comments on the size standard used for purposes of its analysis and the estimated impact of the proposal on small entities. No comments were received which addressed the size standard under the RFA or the estimated impact on small entities.

PWBA has conducted a final regulatory flexibility analysis which takes into account both the general and specific findings specified in section C of this preamble as well as the public comments on the September 3, 1997 Notice of proposed forms revisions and the December 10, 1998 Notice of proposed rulemaking. This analysis is summarized below.

(1) The Department is promulgating this rule to amend the regulations relating to the annual reporting and disclosure requirements of section 103 of ERISA to conform existing regulations to revisions to the annual return/report forms (Form 5500). The extensive revision of the Form 5500 was undertaken for the purpose of streamlining and simplifying the form, and facilitating the implementation of an updated and efficient electronic processing system for Form 5500 filings.

<sup>7</sup> In the case of GIAs, the current rules require use of a Form 5500. For master trusts and 103–12 IEs, the Form 5500 instructions already require the filer either use the Form 5500 and schedules or report information in the same format using the same categories as those specified in the Form 5500. In the case of CCTs and PSAs, the Department does not believe imposing similar formatting requirements should involve any significant additional burden. The Department also believes that there will be minimal additional burden in requiring CCTs and PSAs that elect to file as a DFE to report income and expenses on Schedule H (Part II).



(2) Section 103 of ERISA requires every employee benefit plan covered under part 1 of Title I of ERISA to publish and file an annual report concerning, among other things, the financial conditions and operations of the plan. Section 109 of ERISA authorizes the Secretary to prescribe forms for the reporting of information that is required to be submitted as part of the annual report.

The Secretary may also prescribe alternative methods of complying with reporting and disclosure requirements if the Secretary finds that: (a) the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to participants and beneficiaries and adequate reporting to the Secretary, (b) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan, and (c) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

The Department finds that use of the Form 5500 as revised constitutes an alternative method of compliance which is consistent with these conditions. Generally, the Department believes that use of the revised Form 5500 will relieve plans of all sizes from increased costs and unreasonable burdens that would otherwise arise by providing a standard format which facilitates reporting required by the statute, eliminates duplicative reporting requirements, and streamlines the content of the annual report.

(3) The Department, in conjunction with the IRS and PBGC, made a number of changes to the existing Form 5500 Series in an effort to reduce paperwork burdens and costs and enhance the utility of the annual report forms generally. The regulatory amendments adopted herein are designed to ease the burden of plans, both large and small, in complying with the reporting and disclosure requirements of ERISA. The regulatory amendments do not directly affect the number of small plans required to comply with the annual reporting requirements or change existing small plan limited exemptions from reporting requirements. Thus, for example, under the final rule small plans will continue to be exempt from reporting service provider information and supplying the report of an independent qualified public accountant. In addition, the conforming rules generally preserve the more

limited reporting for small plans which is presently in effect.

(4) The 1995 Form 5500 filings indicate that there are approximately 662,000 small pension and welfare benefit plans required to file Form 5500 under Title I of ERISA. Because a significant number of insured or unfunded welfare plans with fewer than 100 participants are currently exempt from Form 5500 filing requirements and will continue to be exempt under the proposed revisions to the Form 5500 Series, other data sources must be consulted in order to assess the number of small plans impacted by the regulation in the context of a credible universe estimate. The 1996 Medical Expenditure Panel Survey, as tabulated by the Agency for Health Care Policy and Research, indicates the number of establishments offering health and other welfare plans. Using 1995 Census Bureau data on the ratio of firms to establishments, this establishment-based plan count can be converted to the number of welfare plans offered by firms. Adjusting this number to allow for multiemployer plans (in which two or more firms participate in a given plan), and for the number of welfare plans with 100 or more participants, yields an estimate of 6 million small welfare plans. The final rule, therefore, will impact only 662,000, or 11 percent of 6 million small plans.

(5) The revisions to the Form 5500 are expected to result in aggregate savings of \$64 million per year for all plans completing and filing the form. Of this total, savings of \$59 million (an 11 percent reduction) is attributable to large plans, and saving of \$5 million (a 3 percent reduction) is attributable to small plans. While the revision of the form is expected to be beneficial to all plans, the savings by small plans is smaller relative to the large plan savings for two principal reasons. First, the reporting requirements for small plans are generally more limited under existing regulations. This is illustrated by the fact that 81 percent of all filers are small plans, while these small plans represent only 23 percent of total burden cost. As a consequence, current annual reporting requirements for small plans included fewer elements that might have been considered for revision or elimination.

In addition, although burden is expected to be reduced in the aggregate for all small plan filers, under certain circumstances the revisions of the form will result in the reporting of additional information by some small plan filers, offsetting to some degree the aggregate reduction in burden. Under the filing requirements in effect prior to

implementation of this final rule, small plans were required to file a Form 5500-C at least once every three years, and the less detailed Form 5500-R in the two intervening years. While the ratio of Form 5500-R to Form 5500-C filings has varied from year to year, on average about 55% of all annual small plan filings have been on the Form 5500-R (45% on the Form 5500-C) because many small plans elected to file the Form 5500-C each year. Under this final rule, the more limited reporting for small plans is generally maintained, but the Form 5500-C/R is eliminated, increasing to some extent the burden for those who would have filed Form 5500-R for two of every three years, and offsetting the burden decrease for Form 5500-C filers. These changes for small plan filers are taken into account in the aggregate cost estimates.

(6) Costs for revisions to automated systems are not expected to impact small plans because it is assumed that small plans generally do not develop software to be used for preparation and filing of Form 5500. Although small plans seek the assistance of service providers for preparation and filing of the Form 5500, as noted below, the Department assumes that those service providers will not pass on to the small plans their development costs, or the fees they pay for software support if they purchase software from other developers.

(7) Completion of the Form 5500 requires a mixture of professional and clerical skills. As noted below, the burden estimate study indicated that about 90% of filers purchase services of service providers to file Form 5500, although filer resources are normally required to prepare documents for the service providers, review information submitted, and sign the form even when service providers maintain records and prepare the form. Both provider fees and filer time are included in the cost estimates presented here, based on information reported in the survey. It is assumed that these practices will not change as a result of the revisions to the Form 5500 Series.

(8) No significant alternatives to the final rule which would minimize the impact on small entities have been identified, although the review and proposed revision of the Form 5500 Series were undertaken to reduce paperwork burden for all filers while maintaining the more limited reporting for small plans. The Department believes it has minimized the economic impact of the forms revision and conforming rules on small plans to the extent possible while recognizing plan participants' and the Department's need



for information to protect participant rights under Title I of ERISA, and needs of other interested parties for timely statistical information on employee benefit plans.

#### *Executive Order 12866 Statement*

Under Executive Order 12866, the Department must determine whether the regulatory action is "significant" and therefore subject to the requirements of the Executive Order and subject to review by the Office of Management and Budget (OMB). Under section 3(f), the order defines a "significant regulatory action" as an action that is likely to result in a rule (1) having an annual effect on the economy of \$100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action creates a novel method of statutory compliance consistent with the President's priorities that will reduce paperwork and regulatory compliance burdens on businesses, including small businesses and organizations, and make better use of scarce federal resources, consistent with the mandates of the Paperwork Reduction Act (PRA) and the President's priorities. Therefore, this notice is "significant" and subject to OMB review under Executive Order 12866(3)(f)(4). Accordingly, the Department has undertaken an assessment of the costs and benefits of this regulatory action. This analysis follows the description of ERISA's annual reporting requirements and the development of the new Form 5500.

#### *Background*

Under part 1 of Title I of ERISA, administrators of pension and welfare benefit plans (collectively referred to as employee benefit plans) are required to file annual returns/reports concerning their financial condition and operations. ERISA section 104(a)(2)(A) authorizes the Secretary to prescribe by regulation simplified reporting for pension plans

that cover fewer than 100 participants. Section 104(a)(3) authorizes the Secretary to exempt any welfare plan from all or part of the reporting and disclosure requirements of Title I or to provide simplified reporting and disclosure if the Secretary finds that such requirements are inappropriate as applied to such plans. Section 110 permits the Secretary to prescribe for pension plans alternative methods of complying with any of the reporting and disclosure requirements if the Secretary finds that: (1) The use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to plan participants and beneficiaries and adequate reporting to the Secretary; (2) application of the statutory reporting and disclosure requirements would increase costs to the plan or impose unreasonable administrative burdens with respect to the operation of the plan; and (3) the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

For purposes of Title I of ERISA, the filing of a completed Form 5500 (including any required statements, schedules, and the report of an independent qualified public accountant) generally constitutes compliance with the limited exemption and alternative method of compliance set forth by regulation in § 2520.103-1(b). As stated in this preamble, the Department has made the determination that application of the statutory annual reporting and disclosure requirements without the availability of the Form 5500 as revised would be adverse to the interests of participants in the aggregate. The use of the new Form 5500 as an alternative method of compliance would relieve plans subject to the annual reporting requirements from increased costs and unreasonable administrative burdens by providing a standardized format which facilitates reporting, eliminates duplicative reporting requirements, and simplifies the content of the annual report in general.

The Form 5500 Series serves as the primary source of information concerning the operation, funding, assets and investments of pension and other employee benefit plans. The Form 5500 is not only an important disclosure document for participants and beneficiaries, but also a compliance and research tool for the Department and a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies.

The Pension and Welfare Benefits Administration, the Internal Revenue Service, and the Pension Benefit Guaranty Corporation have conducted an extensive review of the Form 5500 Series in an effort to streamline the information required to be reported and the methods by which the information is filed and processed. A proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The proposal was designed to lower the administrative burdens and costs incurred by the more than 800,000 employee benefit plans that annually file the Form 5500 Series. A public hearing on the proposed revision was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. On February 4, 1998, the Department announced that, in response to public comments, the implementation of the new Form 5500 would be delayed until the 1999 plan year.

The Form 5500 as revised by the Agencies in response to comments received on the proposal and information presented at the public hearing, was submitted to the Office of Management and Budget (OMB) for approval under the PRA and a Notice was published in the **Federal Register** on June 24, 1998 (63 FR 34493) which provided a 30-day opportunity to submit comments to OMB on the new Form 5500. At the same time, a draft version of the new Form 5500 was also made available on PWBA's Internet site (<http://www.dol.gov/dol/pwba>) as part of the Agencies' commitment to make information about the new forms available to plans and their service providers at the earliest opportunity. Following its PRA review, OMB gave conditional PRA approval to the new Form 5500 on August 26, 1998. The approval was conditioned on the Agencies making minor technical adjustments to the form<sup>8</sup> and soliciting

<sup>8</sup> The OMB conditions were published in the **Federal Register** on December 10, 1998 (63 FR 68370) in the preamble to the proposed amendments to the Department of Labor reporting regulations that would conform them to the previously published proposed form changes. The conditions, as stated in footnote number 1 to that preamble, involved (i) consolidating the separate reporting of long-term and short-term corporate debt instruments into one line item for all corporate debt instruments on the Schedule H (Income and Expense Statement), (ii) adding a clarifying instructional statement to the text on line 5 of Schedule R, (iii) holding instructional text on line 3 of Schedule T, (iv) adding a statement to the Schedule C instructions that trades and businesses (whether or not incorporated) are "persons" required to be reported as service providers, and (v) clarifying the instructions for line 3b(2) of Schedule

public comments on computer scannable versions of the new form. On June 28, 1999, the Agencies published a **Federal Register** notice (64 FR 34686) soliciting public comments on the draft computer scannable versions of the new form developed by two vendors who were competing for the contract to install the ERISA Filing Acceptance System (EFAST). Contracts were initially awarded to two national computer firms to competitively develop this system and the computer scannable versions of the new Form 5500. The Agencies subsequently selected the vendor to process the final scannable version of the new Form 5500. Although the reformatting of the form approved by OMB on August 26, 1998 to a computer scannable form affects the appearance and length of the new form, the data elements have not been affected. See the EFAST Internet site at [www.efast.dol.gov](http://www.efast.dol.gov) and the Notice of Adoption of Revised Forms (published separately on February 2, 2000 in the **Federal Register** (65 FR 5026)) for information on filing the 1999 Form 5500.<sup>9</sup>

The final Form 5500 to be used for 1999 and later plan years incorporates the new structure as proposed (i.e., a short form that serves both as a simple registration statement and a checklist that guides each filer to the more detailed schedules that are applicable to the filer's specific type of plan). The new structure allows filers to assemble and file a "customized" report, and also allows the Agencies to maintain a less costly and more efficient processing system.<sup>10</sup> Because information reported

to the Department is also subject to ERISA's disclosure provisions, the Department in this final rule has attempted to balance the needs of participants, beneficiaries and the Department to obtain information necessary to protect ERISA rights and interests with the needs of administrators to minimize costs attendant with the reporting of information to the federal government.

The Department believes that the current action conforming rules related to annual reporting obligations for employee benefit plan administrators to the new Form 5500 Series is consistent with the principles set forth in the Executive Order in that it will reduce costs and paperwork burdens over the life of the forms while enhancing the ability to protect benefits with timely and accurate information.

#### *Overview of Costs and Benefits of the Regulation*

This regulation conforms the reporting and disclosure regulations of Title I of ERISA to the revisions made to the Form 5500 for the purpose of streamlining and simplifying the form, and reduces burdens while ensuring that both the Department and participants have sufficient information to protect participant rights under ERISA. The Department has assessed the costs and benefits of the final regulation relative to the costs of annual reporting in the current environment. The benefits and costs of the statutory annual reporting requirements and current practices are included in the baseline and are, therefore, not considered benefits or costs of the final regulation.

The baseline net costs of the annual reporting requirements include the benefits which arise from the use of a standardized reporting form, the costs of maintaining certain records, communicating with professional service providers, and completing and mailing the form each time it is required to be filed. The unit cost of completing and filing the form is known to be highly variable due to the very large number of filer types (e.g., defined benefit and defined contribution pension plans, fully insured and trust-funded welfare plans, small and large plans, etc.) with differing data requirements. In addition, assessment of a baseline cost was further complicated by differing methodologies used by the

Department and by the Internal Revenue Service for estimating the burden of the Form 5500 for PRA purposes. The PRA burden is relevant because it is assumed that the baseline cost of the annual reporting requirement is the total cost of the PRA burden prior to the revision of the form. The cost of the regulation is assumed to be the estimated cost of the PRA burden for preparing and filing the Form 5500 as revised, plus the estimated cost of any automated system changes for filers and service providers to implement the revisions to the Form 5500, less the baseline PRA cost.

The Agencies solicited comments on the burden estimates of the proposed changes to the Form 5500 in September of 1997. The comments indicated that the burden estimates were too low. In order to address these comments, and in an effort to develop a consistent approach to the estimation of the burden of the form, the Agencies undertook an evaluation of their burden estimation methodologies for the purpose of developing a revised and uniform methodology. The Agencies have subsequently adopted the methodological approach developed in the course of this study.

The results of the study, which involved the input of employee benefits professionals and a survey of actual plan sponsor and service provider filers of the Form 5500,<sup>11</sup> supply the basis of both the baseline cost shown here, as well as the estimated cost of completing and filing the revised Form 5500 for those portions attributable to the Department under Title I of ERISA. The additional economic cost of automated system change was estimated based on a separate consultation with a small number of entities which either develop, purchase, or offer automated systems for annual reporting by employee benefit plans. The burden methodology study addressed the time required by filers and service providers to maintain necessary records and complete the form, but did not address the potential cost of adjustments which may be required for automated systems to alter output format for consistency with the changes made to the organization of the information on the form. While these costs would not necessarily be borne by plans or by respondents to the information collection provisions of the regulation, costs of this nature are expected to be incurred and are appropriately accounted for in the analysis of the

<sup>9</sup> Regarding the inapplicability of the "short plan year" provisions of 29 CFR 2520.104-50 to Direct Filing Entity Form 5500s filed for GIAs and 103-12 IEs.

<sup>9</sup> To allow filers more time to transition to the new computer scannable formats for the Form 5500 Series and EFAST, the Agencies announced on March 22, 2000, that, for filers whose 1999 Form 5500 Series would be due on or before July 31, 2000, the deadline for filing has been extended to October 16, 2000. See PWBA News Release USDL 00-16, dated March 22, 2000, for details on the transition-year automatic extension.

<sup>10</sup> There are 13 schedules as part of the new Form 5500 package—five pension schedules, seven financial schedules, and one fringe benefit schedule. The pension Schedules are: Schedule B (Actuarial Information), Schedule E (ESOP Annual Information), Schedule R (Retirement Plan Information), Schedule T (Qualified Pension Plan Coverage Information), and Schedule SSA (Annual Registration Statement Identifying Separated Participants With Deferred Vested Benefits). The financial Schedules are: Schedule A (Insurance Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), Schedule I (Financial Information—Small Plan) and Schedule P (Annual Return of Fiduciary of Employee Benefit Trust). The fringe benefit schedule is Schedule F (Fringe Benefit Plan Annual

Information Return). The new schedules are Schedules D, H, I, R and T; the schedules that have been revised are Schedules A, C and G; and the schedules that have either not been revised or have undergone minimal changes are Schedules B, E, F, P and SSA.

<sup>11</sup> The survey was designed and conducted by a survey research organization and received prior approval by OMB under control number 1210-0109 based on the Department's submission of the information collection request.

impact of this final regulation. The findings of these surveys are discussed in greater detail in the discussion of costs below.

The principal benefit of the regulation arises from the streamlining of the form, the elimination and clarification, where possible, of elements known to contribute to errors or confusion, and the improved organization of the form, which are expected to result in direct savings for filers. Other benefits less readily quantifiable include the availability of more complete information on the large volume of assets held by DFEs, and support of a simplified and expedited system for processing the Form 5500 that provides better and faster enforcement as well as better and faster disclosure.

The net benefits of the revisions of the Form 5500 attributable to the Department are estimated at approximately \$59 million in the first year of implementation, and approximately \$64 million in each subsequent year. The savings figure is somewhat lower in the first year due to the costs of automated system modifications, which are expected to amount to approximately \$5 million. The total baseline cost of completion of the portions of the Form 5500 attributed to the Department is estimated at \$717.8 million, while the cost of completion of the revised Form 5500 is estimated at \$653.7 million. This estimate of savings does not yet take into account additional and potentially significant savings which may be realized in connection with the implementation of EFAST.

#### *Benefits*

The revision of the Form 5500 Series was undertaken in an effort to simplify and streamline the annual return/report, and reduce the reporting burden on filers. The new form is intended to reduce the total amount of information to be reported by many plans by eliminating information that is not useful for enforcement, disclosure to participants and beneficiaries, research, or other statutorily mandated missions. The revisions are also designed to eliminate redundant items and revise questions that have historically produced filing errors. The revisions also generally require welfare plans to complete fewer items than pension plans, and small plans to complete fewer items than large plans.

The revisions eliminate the Form 5500-C/R, but maintain limited financial reporting similar to the existing Form 5500-R for small plans. Plans currently exempt from filing a return/report (such as certain small

unfunded/insured welfare plans and certain Simplified Employee Pensions (SEPs), or those eligible for limited reporting options (such as certain Internal Revenue Code section 403(b) plans) will continue to be eligible for that annual reporting relief.

The revisions restructure the Form 5500 along the lines familiar to individual and corporate taxpayers—a simple main form with basic information necessary to identify the plan for which the report is filed, along with a checklist of the schedules being filed which are applicable to the filer's plan type. The structure should aid filers by allowing them to assemble and file a return that is customized to their plan. Instructions to the form have been reorganized with the intention that they be easier to use due to grouping on the basis of the schedules to be attached. In other words, the revised instructions will allow filers to go directly to the instructions which apply to them, and bypass those which do not apply.

Based on the elimination of certain information and reformatting of the Form 5500 Series, the burden of preparing and filing the form is estimated to be reduced by almost 9 percent per year over the life of the form. As noted earlier, the savings is estimated to amount to \$64 million per year, before adjustment for additional costs expected to be incurred for automated system changes.

The revisions also establish the Form 5500 as the standardized reporting format for DFEs. The DFE reporting rules were intended to simplify the annual reporting requirements for participating plans and eliminate confusion regarding the reporting obligations of plans which participate in DFEs. Standardization of the information reported by DFEs is expected to allow the Department to correlate asset information with plans and to use the DFE data more effectively for enforcement, disclosure and research purposes with respect to the approximately \$2 trillion in plan assets presently held by DFEs or entities eligible to file as DFEs.<sup>12</sup> Improved data is expected to contribute to the meaningful analysis of the assets of pension plans because approximately 45 percent of private pension assets are held by DFEs or entities eligible to file as DFEs.

The revisions are also designed to support and facilitate EFAST, the processing system being developed to

simplify and expedite the processing of the Form 5500. This new system will rely on electronic filing with automatic error detection, and optical scanning technology and optical character recognition to computerize the paper forms, resulting in increasing efficiencies in processing and corresponding reductions in the government's processing costs. Implementation of the single form with multiple schedules is also expected to reduce the government's costs to process the forms, due to the overall reduction in the information submitted.

#### *Costs of the Regulation*

The baseline costs of annual reporting consist of a number of elements such as the time and cost of maintaining records for the purpose of reporting on Form 5500, the time and cost of hiring service providers such as accountants and administrators to complete all or part of work necessary to maintain appropriate records and complete and file the form, time required to communicate with and review the work of service providers, and time required to complete and file the form manually or through automation. The variability of these elements is dependent upon choices made by filers as well as the nature and size of their plans.

In order to develop an accurate estimate of baseline cost to file Form 5500, among other reasons, the Agencies involved in the revision of the Form 5500 engaged a survey research firm to conduct a survey of filers. Because of the wide variation in filing behavior and requirements among sponsors and service providers, the survey included a sample intended to be reasonably representative of the filer universe, rather than a probability sample, which would have been substantial in size thereby resulting in a survey which would have been very costly to conduct. A very large sample was not considered likely to result in more reliable data in any event because neither sponsors nor service providers tend to maintain detailed records of the time required or costs of preparing and filing Form 5500.

The methodology for the survey was developed by the contractor with input from experts who are familiar with reporting requirements and who file Form 5500 professionally. Survey respondents were asked to report sponsor burden in hours, and service provider burden in actual dollars spent for purchased services. The survey showed that about 90 percent of filers employ service providers for the completion and filing of Form 5500. The baseline survey, which referred to the 1997 Form 5500 (the latest available at

<sup>12</sup> Estimate based on the total assets held by private pension plans in 1999 as reported by the Federal Reserve Board and the percentage of all plan assets reported to be invested in these entities in 1995 Form 5500 filings.

the time the survey was initiated) after application of actual responses across filer categories, indicated that 2,131,261 sponsor hours and \$557,907,442 in fees were expended annually in the completion of the Department's elements of the Form 5500. The total cost of \$717,752,000, which includes the cost represented by the sponsor hours, is calculated using an assumed average rate of \$75 per burden hour.<sup>13</sup>

The change in burden for the 1999 Form 5500 was estimated by means of a second survey of the respondents which focused on the changes made to the form. The relationship between hours and costs was assumed to remain constant. After application of responses across filer categories, the second phase of the survey indicated a reduction from the baseline sponsor hours to 1,817,412 and a reduction from the baseline cost to \$517,367,000. The total cost of filing the 1999 Form 5500 was therefore estimated at \$653,673,000, including the hours at a rate of \$75 per hour. It is the Department's view that these estimates, while somewhat different from those presented at the time of the proposal, represent reasonable current estimates of the cost of the baseline and regulation due to the design of the survey and its reliance on a representative group of actual filers.

As noted, however, filers who rely on automated recordkeeping and document production systems for completion of the Form 5500 may be expected to incur other costs to reconfigure output for consistency with the new organization of the form. Although maintenance of automated systems is not required, it is assumed that sponsors and service providers who currently make use of automated systems due to their improved efficiency will revise and continue to make use of such systems in the future. In order to establish a basis for the estimate of the cost of these revisions, the Department arranged for the conduct of a separate survey of a total of 9 software developers and service providers that either offer software to complete Form 5500 or services which incorporate a software package either developed internally or purchased from an outside software developer.

These respondents were asked to describe the nature of the changes that would be required, and either the magnitude and nature of their costs to

make changes or the fees they would charge in order to recover their costs. Most respondents indicated that system updating is a relatively constant process, but that substantial additional work would be required for 1999 principally to modify system output. Developers indicated that they anticipated charging either a one-time fee to their system purchasers, or a percentage increase in the maintenance fees charged to system purchasers. Based on the information collected in the survey, those system purchasers are predominantly service providers to plans. Service provider responses to the survey appeared to indicate in general that additional fees charged to them for system programming and maintenance would not necessarily be passed on to plans.

This may be explained in several ways, including the fact that service providers may view the investment in software revision as an investment to be used for future earnings, that they may be in a position to spread such increases over many clients resulting in a small rate of profit reduction per client, that they may expect to readily recover the investment in efficiency gains arising from the streamlining of the form and electronic filing, and the fact that existing service provider fees are based on a complex set of factors not necessarily directly related to the service provider's direct cost of providing a specific service such as the completion of Form 5500.

Based on the ratios of the numbers of plans per automated system reported by respondent, reported estimates of charges to recover reprogramming costs, and the number of plans estimated to make use of service providers for the completion and filing of Form 5500, it is estimated that developers and providers will invest approximately \$5 million in reprogramming efforts prior to implementation of the revised Form 5500.

#### *Paperwork Reduction Act Statement*

This final regulation imposes no new information collection requirements in addition to the information collection requirements associated with the submission of the Form 5500 Series (OMB control numbers 1210-0110 and 1210-0089) and the ERISA Summary Annual Report (OMB Control number 1210-0040).

#### *Small Business Regulatory Enforcement Fairness Act*

This final rule is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and is being

transmitted to Congress and the Comptroller General for review. The final rule, however, is not a "major rule," as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

#### *Unfunded Mandates Reform Act*

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, this final regulation does not include any Federal mandate that may result in expenditures by State, local or tribal governments, and would not impose an annual burden exceeding \$100 million on the private sector.

#### *Executive Order 13132 Statement*

This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supercede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. This final rule, therefore, does not affect the States or change the relationship or distribution of power between the national government and the States. Further, this final rule implements certain revisions to annual reporting and disclosure regulations which have been in effect in similar form for many years. The amendments incorporated in this final rule do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such have no implications for the States or the relationship or distribution of power between the national government and the States.

#### *Statutory Authority*

This regulation is adopted pursuant to the authority in sections 101, 103, 104, 109, 110, 111, 504 and 505 of ERISA

<sup>13</sup> The average rate used for this estimate is based on average labor hour rates for lawyers, accountants, budget analysts and financial managers from the 1998 Employment Cost Index and the 1997 Occupational Employment Statistics Survey (Bureau of Labor Statistics) as adjusted for estimated overhead and profit margin.

and under Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

#### List of Subjects in 29 CFR Part 2520

Accountants, Disclosure requirements, Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Pension and welfare plans, Reporting and recordkeeping requirements, and Welfare benefit plans.

In view of the foregoing, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is amended as set forth below:

#### PART 2520—RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE

1. The authority citation for Part 2520 continues to read as follows:

**Authority:** Secs. 101, 102, 103, 104, 105, 109, 110, 111(b)(2), 111(c), and 505, Pub. L. 93-406, 88 Stat. 840-52 and 894 (29 U.S.C. 1021-1025, 1029-31, and 1135); Secretary of Labor's Order No. 27-74, 13-76, 1-87, and Labor Management Services Administration Order 2-6.

Sections 2520.102-3, 2520.104b-1 and 2520.104b-3 also are issued under sec. 101(a), (c) and (g)(4) of Pub. L. 104-191, 110 Stat. 1936, 1939, 1951 and 1955 and, sec. 603 of Pub. L. 104-204, 110 Stat. 2935 (29 U.S.C. 1185 and 1191c).

2. Section 2520.103-1 is amended by revising the phrase "section 104(a)(1)(A)" in paragraph (a) introductory text to read "section 104(a)(1)", revising the introductory text of paragraph (b), paragraph (b)(1), the first sentence of paragraph (b)(2)(i), paragraphs (b)(4), (c), (d) and the first sentence of paragraph (e) and by adding a paragraph (f) to read as follows:

#### § 2520.103-1 Contents of the annual report.

\* \* \* \* \*

(b) *Contents of the annual report for plans with 100 or more participants electing the limited exemption or alternative method of compliance.*

Except as provided in paragraph (d) of this section and in §§ 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 B (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 the other financial schedules described in § 2520.103-10. See the instructions for this form.

(2) \* \* \*

(i) A statement of assets and liabilities at current value presented in comparative form for the beginning and end of the year. \* \* \*

\* \* \* \* \*

(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.

\* \* \* \* \*

(c) *Contents of the annual report for plans with fewer than 100 participants.* Except as provided in paragraph (d) of this section and in §§ 2520.104-43 and 2520.104a-6, the annual report of an employee benefit plan which covers fewer than 100 participants at the beginning of the plan year shall 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 B (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.

(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. \* \* \*

(f) *Electronic filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the plan administrator maintains an original copy, with all required signatures, as part of the plan's records.

3.-4. Section 2520.103-2 is amended by revising paragraph (b)(1), the first sentence of paragraph (b)(2)(i) and paragraph (b)(4) and by adding paragraph (c) to read as follows:

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

\* \* \* \* \*

(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) \* \* \*

(i) A statement of all trust assets and liabilities at current value presented in comparative form for the beginning and end of the year. \* \* \*

\* \* \* \* \*

(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.”

\* \* \* \* \*

(c) *Electronic filing.* The Form 5500 “Annual Return/Report of Employee Benefit Plan” may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the trust or other entity described in § 2520.104–43(b) maintains an original copy, with all required signatures, as part of the trust's or entity's records.

5.–6. Section 2520.103–3 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 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.

\* \* \* \* \*

(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.

7. Section 2520.103–4 is amended by revising paragraphs (a) and (c) to read as follows:

**§ 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.

\* \* \* \* \*

(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.

8. Section 2520.103–5 is amended by redesignating paragraph (c)(1)(iii) as paragraph (c)(1)(iv), redesignating paragraphs (c)(2)(ii) and (c)(2)(iii), as paragraphs (c)(2)(iii) and (c)(2)(iv),

revising all references in the section to the term “section 104(a)(1)(A)” to read “section 104(a)(1)”, revising paragraphs (c)(1)(ii) and (c)(2)(i) and adding new paragraphs (c)(1)(iii), and (c)(2)(ii) to read as follows:

**§ 2520.103–5 Transmittal and certification of information to plan administrator for annual reporting purposes.**

\* \* \* \* \*

(c) \* \* \*

(1) \* \* \*

(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.

\* \* \* \* \*

(2) \* \* \*

(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.

\* \* \* \* \*

9. Section 2520.103–6 is amended by redesignating paragraph (b)(1) as paragraph (b)(1)(i), revising paragraphs (a) and (b)(1)(ii), and adding paragraph (f) to read as follows:

**§ 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) \* \* \*

(1) \* \* \*

(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.

\* \* \* \* \*

(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.

10. Section 2520.103–9 is revised to read as follows:

**§ 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 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) *Method of filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form, provided the bank or insurance company which maintains the common or collective trust or pooled separate account maintains an original copy, with all required signatures, as part of its records.

11. Section 2520.103-10 is revised to read as follows:

**§ 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.

12. Section 2520.103-11 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

**§ 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.

\* \* \* \* \*

(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.

13. Section 2520.103-12 is amended by revising the last two sentences of paragraph (a), revising paragraph (b), and also adding a new paragraph (f) to read as follows:

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

(a) \* \* \* 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).

\* \* \* \* \*

(f) *Method of filing.* The Form 5500 "Annual Return/Report of Employee Benefit Plan" may be filed electronically or through other media in accordance with the instructions accompanying the form provided the entity described in paragraph (c) of this section maintains an original copy, with all required signatures, as part of its records.

14. Section 2520.104-21 is amended by revising paragraphs (b)(3) and (d), and adding paragraph (e) to read as follows.

**§ 2520.104-21 Limited exemption for certain group insurance arrangements.**

\* \* \* \* \*

(b) \* \* \*

(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.

\* \* \* \* \*

(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.

15. Section 2520.104-41 is amended by revising paragraphs (b) and (c) to read as follows:

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

\* \* \* \* \*

(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 and 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, including Schedule A (Insurance Information), Schedule B (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.

16. Section 2520.104-43 is amended by revising paragraphs (b)(1)(ii) and (b)(2) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(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 §§ 2520.103-3, 2520.103-4, 2520.103-6,

2520.103–8, 2520.103–9 and 2520.103–10.

\* \* \* \* \*

17. Section 2520.104–44 is amended by revising the second sentence of paragraph (a)(2), removing the word “and” at the end of paragraph (b)(1)(iii), revising the period at the end of paragraph (b)(2) to a semicolon, and adding the word “and” after such semicolon, adding paragraph (b)(3), and revising paragraph (c)(1) to read as follows:

**§ 2520.104–44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and certain insured plans.**

(a) \* \* \*

(2) \* \* \* 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) \* \* \*

(3) A pension plan using a tax deferred annuity arrangement under section 403(b)(1) of the Internal Revenue Code (Title 26 of the United States Code) and/or a custodial account for regulated investment company stock under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits.

(c) \* \* \*

(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;

\* \* \* \* \*

18. Section 2520.104–46 is amended by revising paragraph (d)(1) to read as follows:

**§ 2520.104–46 Waiver of examination and report of an independent qualified public accountant for employee benefit plans with fewer than 100 participants.**

\* \* \* \* \*

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of the plan described in paragraph (b)(1), or (b)(2) of this section to file the Form 5500 “Annual Return/Report of Employee Benefit Plan” and all applicable financial schedules and statements as prescribed by the

instructions to the form. See § 2520.104–41.

\* \* \* \* \*

19. Section 2520.104b–10 is amended by revising the phrase in the first sentence of paragraph (a) “paragraphs (b) and (g)” to read “paragraph (g)”, by removing and reserving paragraph (b), and by revising paragraph (c) introductory text and paragraph (f) to read as follows.

**§ 2520.104b–10 Summary Annual Report.**

\* \* \* \* \*

(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.

\* \* \* \* \*

(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.

\* \* \* \* \*

**§ 2520.104b–10 [Amended]**

20. Section 2520.104b–10 is further amended as follows.

a. The following sentence from paragraph (d)(3) under the heading “Basic Financial Statement” is removed:

[For plans filing form 5500K, omit separate entries for employer contributions and employee contributions and insert instead “contributions by the employer and employees of (\$)”].

b. In paragraph (d)(3), in the list under the heading “Your Rights to Additional Information” items 1. through 8. are revised and items 9. and 10. are added to read as follows:

\* \* \* \* \*

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.

\* \* \* \* \*

c. In paragraph (d)(4), in the list under the heading “Your Rights to Additional Information” items 1. through 7. are revised and items 8. and 9. as added to read as follows:

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.

d. The last sentence of both paragraphs (d)(3) and (d)(4) under the heading “Your Rights to Additional Information” are revised to read as follows:

“Requests to the Department should be addressed to: Public Disclosure Room, Room N5638, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.”

e. The last sentence of the undesignated paragraph following paragraph (e)(2) is removed.

21. The appendix to § 2520.104b–10 is revised to read as follows:

## 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
<b>A. PENSION PLAN</b>		
1. Funding arrangement .....	Form 5500—9a .....	Same.
2. Total plan expenses .....	Sch. H—2j .....	Sch. I—2i.
3. Administrative expenses .....	Sch. H—2i(5) .....	Not applicable.
4. Benefits paid .....	Sch. H—2e(4) .....	Sch. I—2e.
5. Other expenses .....	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j .....	Sch. I—2h.
6. Total participants .....	Form 5500—7f .....	Same.
7. Value of plan assets (net):		
a. End of plan year .....	Sch. H—1l [Col. (b)] .....	Sch. I—1c [Col. (b)].
b. Beginning of plan year .....	Sch. H—1l [Col. (a)] .....	Sch. I—1c [Col. (a)].
8. Change in net assets .....	Sch. H—Subtract 1l [Col. (a)] from 1l [Col. (b)] .....	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].
9. Total income .....	Sch. H—2d .....	Sch. I—2d.
a. Employer contributions .....	Sch. H—2a(1)(A) & 2a(2) if applicable .....	Sch. I—2a(1) & 2b if applicable.
b. Employee contributions .....	Sch. H—2a(1)(B) & 2a(2) if applicable .....	Sch. I—2a(2) & 2b if applicable.
c. Gains (losses) from sale of assets .....	Sch. H—2b(4)(C) .....	Not applicable.
d. Earnings from investments .....	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d. ....	Sch. I—2c.
10. Total insurance premiums .....	Total of all Schs. A—5b .....	Total of all Schs. A—5b.
11. Funding deficiency:		
a. Defined benefit plans .....	Sch. B—10 .....	Same.
b. Defined contribution plans .....	Sch. R—6c, if more than zero .....	Same.
<b>B. WELFARE PLAN</b>		
1. Name of insurance carrier .....	All Schs. A—1(a) .....	Same.
2. Total (experience rated and non-experienced rated) insurance premiums.	All Schs. A—Sum of 8a(4) and 9(a) .....	Same.
3. Experience rated premiums .....	All Schs. A—8a(4) .....	Same.
4. Experience rated claims .....	All Schs. A—8b(4) .....	Same.
5. Value of plan assets (net):		
a. End of plan year .....	Sch. H—1l [Col. (b)] .....	Sch. I—1c [Col. (b)].
b. Beginning of plan year .....	Sch. H—1l [Col. (a)] .....	Sch. I—1c [Col. (a)].
6. Change in net assets .....	Sch. H—Subtract 1l [Col. (a)] from 1l [Col. (b)] .....	Sch. I—Subtract 1c [Col. (a)] from 1c [Col. (b)].
7. Total income .....	Sch. H—2d .....	Sch. I—2d.
a. Employer contributions .....	Sch. H—2a(1)(A) & 2a(2) if applicable .....	Sch. I—2a(1) & 2b if applicable.
b. Employee contributions .....	Sch. H—2a(1)(B) & 2a(2) if applicable .....	Sch. I—2a(2) & 2b if applicable.
c. Gains (losses) from sale of assets .....	Sch. H—2b(4)(C) .....	Not applicable.
d. Earnings from investments .....	Sch. H—Subtract the sum of 2a(3), 2b(4)(C) and 2c from 2d. ....	Sch. I—2c.
8. Total plan expenses .....	Sch. H—2j .....	Sch. I—2i.
9. Administrative expenses .....	Sch. H—2i(5) .....	Not applicable.
10. Benefits paid .....	Sch. H—2e(4) .....	Sch. I—2e.
11. Other expenses .....	Sch. H—Subtract the sum of 2e(4) & 2i(5) from 2j .....	Sch. I—2h.

Signed at Washington, D.C., this 12th day of April, 2000.

**Leslie Kramerich,**

*Acting Assistant Secretary, Pension and Welfare Benefits Administration, U.S. Department of Labor.*

[FR Doc. 00-9611 Filed 4-18-00; 8:45 am]

BILLING CODE 4510-29-P