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Part II

Department of Labor

Pension and Welfare Benefits Administration

**29 CFR Parts 2520, 2560, and 2570
Removal of Superseded Regulations
Relating to Plan Descriptions and
Summary Plan Descriptions, and Other
Technical Conforming Amendments; Final
Rule**

**Furnishing Documents To The Secretary
of Labor on Request Under ERISA Section
104(a)(6) And Assessment Of Civil
Penalties Under ERISA Section 502(c)(6);
Final Rule**

DEPARTMENT OF LABOR**Pension and Welfare Benefits Administration****29 CFR Parts 2520 and 2560**

RIN 1210-AA66

Removal of Superseded Regulations Relating to Plan Descriptions and Summary Plan Descriptions, and Other Technical Conforming Amendments

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rulemaking that removes certain provisions from the Code of Federal Regulations (CFR) that were superseded, in whole or in part, by amendments of the Employee Retirement Income Security Act of 1974 (ERISA) enacted as part of section 1503 of the Taxpayer Relief Act of 1997 (TRA '97). These TRA '97 amendments eliminated the ERISA requirements that plan administrators file summary plan descriptions (SPDs) and summaries of material modifications (SMMs) with the Department of Labor (Department). The amendments also eliminated all requirements pertaining to plan descriptions. In addition to removing superseded regulations from the CFR, this final rule makes miscellaneous technical amendments to the CFR designed to correct affected cross-references. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: The amendments contained herein will be effective March 8, 2002. The amendments contained herein will be applicable as of the August 5, 1997 effective date of section 1503 of TRA '97.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693-8500 (not a toll-free number).

SUPPLEMENTARY INFORMATION:**1. Overview**

On August 5, 1999, the Department published in the *Federal Register* (64 FR 42792) a proposed rule to implement certain amendments to ERISA added as part of TRA '97. TRA '97 amended sections 101(b), 102, and 104(a)(1) of ERISA to eliminate the requirements that plan administrators file SPDs, SMMs, and plan descriptions with the

Department.¹ TRA '97 also amended section 104(b) of ERISA to eliminate the requirement that plan administrators furnish plan descriptions to participants and beneficiaries. These statutory amendments superseded, in whole or in part, the Department's regulations that implemented the SPD, SMM, and plan description filing requirements. This final rule removes those superseded regulations from the CFR.² This final rule also makes several technical conforming amendments to reflect the fact that certain regulatory provisions granting relief from certain plan description, SPD, and SMM requirements have also been superseded and rendered obsolete by the TRA '97 amendments. Finally, the final rule corrects affected regulatory and statutory cross-references in parts 2520 and 2560 of Chapter XXV of Title 29 of the CFR. A chart identifying each regulation that is changed by this final rule is printed below.

2. Public Comments and Adoption of Final Rule

The Department received no comments concerning the proposal, and the final rule being adopted herein is substantially in the form proposed. A technical conforming change to 29 CFR 2520.104b-2(g) that was inadvertently omitted from the proposal has been added to the final rule.

3. Summary of Final Rule

This final rule removes, some in whole and some in part, the following superseded regulations from 29 CFR

¹ Prior to 1979, the administrator of an employee benefit plan subject to the provisions of Part 1 of Title I of ERISA was required to file with the Department a plan description (Form EBS-1) to satisfy the statutory filing requirements of section 104(a) and 29 CFR 2520.104a-2. See 41 FR 16957 (April 23, 1976). In 1979, the Department amended 29 CFR 2520.104a-2 (44 FR 31639 (June 1, 1979)), to provide that the administrator would satisfy the plan description filing requirements of section 104(a)(1)(B) by filing with the Department SPDs and updated SPDs in accordance with section 104(a)(1)(C) and the regulations thereunder.

² The Department is also publishing in today's *Federal Register* a separate final rule to implement related TRA '97 amendments that added sections 502(c)(6) and 104(a)(6) to Title I of ERISA. Section 104(a)(6) provides that the administrator of any employee benefit plan must furnish to the Department, upon request, any documents relating to the employee benefit plan, including but not limited to, the latest SPD, and the bargaining agreement, trust agreement, contract, or other instrument under which the plan is established or operated. Section 502(c)(6) provides that if, within 30 days of a request by the Department to a plan administrator for documents under section 104(a)(6), the plan administrator fails to furnish the material requested to the Department, the Department may assess a civil penalty against the plan administrator of up to \$100 a day from the date of such failure, but in no event in excess of \$1,000 per request.

part 2520. This final rule also reserves certain removed sections of the CFR to preserve the continuity of codification in the CFR.

A. Removal of Regulations Superseded in Whole

This final rule removes and reserves sections 2520.102-1 and 2520.104a-2 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(2) and 104(a)(1)(B) of ERISA. The removed regulations required plan administrators to file a plan description with the Department in accordance with sections 101(b)(2) and 104(a)(1)(B) of ERISA. See *supra* note 1.

This final rule removes and reserves section 2520.104a-3 because it was superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(1) and 104(a)(1)(C) of ERISA. The removed regulation implemented the requirement in sections 101(b)(1) and 104(a)(1)(C) of ERISA that plan administrators file with the Department a copy of any SPD that is required to be furnished to participants covered under the plan and beneficiaries receiving benefits under the plan.

This final rule removes and reserves sections 2520.104a-4 and 2520.104a-7 because they were superseded by paragraphs (a) and (c) of section 1503 of TRA '97 which eliminated sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA. The removed regulations implemented sections 101(b)(3), 102(a)(2), and 104(a)(1)(D) of ERISA which required plan administrators to file with the Department a copy of summaries of material modifications in the terms of the plan and summaries of any changes in the information required to be in the SPD.

B. Removal of Regulations Superseded in Part

This final rule amends section 2520.104-20 to reflect the fact that certain reporting relief granted by that regulation is no longer needed in light of TRA '97. Specifically, section 2520.104-20 exempts certain unfunded or insured welfare plans with fewer than 100 participants from, among others, the requirements to file plan descriptions, SPDs, and SMMs with the Department. Inasmuch as plan descriptions, SPDs, and SMMs are no longer required to be filed under ERISA as amended by TRA '97, this final rule amends section 2520.104-20(a) to remove the provisions that granted relief from those filing requirements.

This final rule similarly amends section 2520.104-21 to reflect the fact

that the SPD, SMM, and plan description filing relief granted by that regulation is no longer needed in light of the TRA '97 elimination of those filing requirements. Specifically, section 2520.104-21 provides a limited exemption from, among others, the requirements to file SPDs, SMMs, and plan descriptions with the Department for welfare benefit plans that cover fewer than 100 participants at the beginning of the plan year, are part of a group insurance arrangement within the meaning of the regulation, and that otherwise satisfy the conditions of section 2520.104-21(b). This final rule amends section 2520.104-21(a) by removing the provisions on filing SPDs, SMMs, and plan descriptions because these documents are no longer required to be filed under ERISA as amended by TRA '97.³

This final rule amends sections 2520.104-20(c) and 2520.104-21(c) to confirm that, under the exemption, plan administrators continue to be obligated to furnish certain information to the Secretary on request by changing the reference in these subsections from section 104(a)(1) to section 104(a)(6). The amendments made by this final rule do not otherwise change the relief available in sections 2520.104-20 and 2520.104-21.

This final rule further amends sections 2520.104-20 and 2520.104-21 to reflect the fact that the relief granted by those regulations from the requirement to disclose plan

descriptions is no longer needed in light of the TRA '97 elimination of all plan description requirements from Title I of ERISA. These regulations exempted eligible welfare plans from the requirements to (1) furnish upon written request of any participant or beneficiary a copy of the plan description and (2) make copies of the plan description available in the principal office of the administrator and such other places as may be necessary for examination by any participant or beneficiary. This final rule amends sections 2520.104-20(a)(2) and (a)(3) and 2520.104-21(a)(1) and (a)(2) by removing the provisions on disclosing plan descriptions because plan descriptions are no longer required to be furnished or made available under ERISA as amended by TRA '97.

This final rule amends sections 2520.104-26 and 2520.104-27 to reflect the fact that the relief granted by those regulations from the requirements to file plan descriptions, SPDs, and SMMs is no longer needed in light of the TRA '97 elimination of those filing requirements. These regulations provided certain unfunded dues financed welfare and pension plans maintained by employee organizations with a limited exemption from, among others, the requirement to file plan descriptions and a simplified option for complying with the filing and disclosure requirements applicable to SPDs. This final rule amends sections 2520.104-26 and 2520.104-27 by removing the provisions on plan descriptions and further amends

sections 2520.104-26 and 2520.104-27 to remove the simplified option for complying with the SPD filing requirements because plan descriptions and SPDs are no longer required to be filed with the Department under ERISA as amended by TRA '97. The amendments made by this final rule do not otherwise change the relief available in section 2520.104-26 and 2520.104-27.

C. Technical Conforming Amendments

This final rule also makes technical changes that are needed to conform certain cross-references in 29 CFR parts 2520 and 2560 to sections of ERISA as amended by TRA '97. For example, regulation section 2520.104-43(a) refers to ERISA section 104(a)(1)(A) as the authority for the requirement to file annual reports with the Department. After TRA '97, the correct citation is to section 104(a)(1) of ERISA. Similar technical changes have also been made to conform internal CFR cross-references.⁴

D. Quick Reference Chart

The chart below is intended to provide interested persons with a quick reference tool for identifying each section of 29 CFR parts 2520 and 2560 that is being amended by this final rule. For each regulation section being amended, the chart lists, in separate columns, what is being removed, what is being added, and a brief statement of the reason for the change.

QUICK REFERENCE CHART

CFR section(s)	Remove	Add	Reason(s)
2520.102-1	The whole section	"Reserved"	All "plan description" requirements eliminated from ERISA.
2520.102-4	The last sentence	Nothing	SPD filing requirement eliminated.
2520.104-4(a)	Last sentence	Nothing	SPD filing requirement eliminated.
2520.104-20(a) (introductory text)	"any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description,"	Nothing	All "plan description" requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated.
2520.104-20(a)(2)	"plan description,"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104-20(a)(3)	"plan description and"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104-20(c)	"(section 104(a)(1))"	"(section 104(a)(6))"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).

³ Section 2520.104-21(d)(3) was previously amended to eliminate references to requirements to file plan descriptions, SPDs, and SMMs as part of a final rule adopting amendments to ERISA's annual reporting regulations. See 65 FR 21068, 21084 (April 19, 2000).

⁴ The proposal included conforming amendments to sections 2520.103-1(a), 2520.103-5(a), 2520.103-5(c)(1)(i), 2520.103-5(c)(1)(iii), 2520.103-5(c)(2)(ii), 2520.103-5(c)(2)(iii), 2520.103-5(c)(3), 2520.103-12(a), and 2520.104-41(b) to reflect a cross-reference correction by replacing "section 104(a)(1)(A)" with "section 104(a)(1)." These

changes were adopted as final as part of an April 12, 2000 final rulemaking relating to the annual reporting and disclosure requirements under part 1 of Title I of ERISA. See 65 FR 21068 (April 19, 2000). Accordingly, these changes are not included in this rule.

QUICK REFERENCE CHART—Continued

CFR section(s)	Remove	Add	Reason(s)
2520.104-21(a) (introductory text)	"with the Secretary any of the following documents: Plan description, copy of summary plan description, description of material modification in the terms of a plan or change in the information required to be included in the plan description, and terminal report. In addition, the administrator of a plan exempted under this section."	After the word file, add: "with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act."	All "plan description" requirements eliminated from ERISA, SPD filing requirement eliminated, and SMM filing requirement eliminated.
2520.104-21(a)(1)	All of (a)(1)	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104-21(a)(2)	All of (a)(2)	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104-21(c) (2nd parenthetical)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104-21(c) (3rd parenthetical)	"section 104(a)(1)"	"section 104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104-23(b)(2)	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104-24(b)	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104-25	"104(a)(1)"	"104(a)(6)"	Requirement to furnish documents to the Department upon request moved to section 104(a)(6).
2520.104-26(a)	All of paragraph (a), (a)(1), (a)(2), and (a)(3).	New paragraph (a), (a)(1), and (a)(2).	Paragraph (a) restructured to reflect the fact that "plan description" requirements and the SPD filing requirement were eliminated from ERISA.
2520.104-27(a)	All of paragraph (a), (a)(1), (a)(2), and (a)(3).	New paragraph (a), (a)(1), and (a)(2).	Paragraph (a) restructured to reflect the fact that "plan description" requirements and the SPD filing requirement were eliminated from ERISA.
2520.104-43(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104-44(d)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104a-2	Whole section	"Reserved"	All "plan description" requirements eliminated from ERISA.
2520.104a-3	Whole section	"Reserved"	SPD filing requirement eliminated.
2520.104a-4	Whole section	"Reserved"	SMM filing requirement eliminated.
2520.104a-5(a)	"section 104(a)(1)(A)"	"section 104(a)(1)"	Cross-reference correction.
2520.104a-5(a)(1)	All text in paragraph (a)(1)	"Reserved"	Provision obsolete.
2520.104a-7	Whole section	"Reserved"	SMM filing requirement eliminated.
2520.104b-1(b)(3)	"plan description"	Nothing	All "plan description" requirements eliminated from ERISA.
2520.104b-2(g)	"to file with the Secretary or"	Nothing	SPD filing requirement eliminated.
2520.104b-3(f)	All of paragraph (f)	Nothing	Part of paragraph (f) superseded by TRA '97 and the rest of the paragraph made obsolete by this rule's removal of § 2520.104a-3.
2520.104b-3(g)	All of paragraph (9g)	Nothing	Paragraph (g) superseded by TRA '97 by this rule's removal of § 2520.104a-3.
2560.502c-2(a)	"section 101(b)(4)"	"section 101(b)(1)"	Cross-reference correction.

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 action is not significant within the meaning of the Executive Order.

Paperwork Reduction Act

The rule being issued here is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) because it does not contain an “information collection request” as defined in 44 U.S.C. 3502(3).

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires each Federal agency to prepare a final regulatory flexibility analysis when promulgating a final rule unless the head of the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, organizations, and governmental jurisdictions. Because this rule would remove certain provisions of the CFR and make a number of technical amendments to the CFR designed to correct cross-references affected by amendments to ERISA enacted as part of TRA '97, the rule has no impact, independent of the statutory change eliminating the SPD and SMM filing requirements, on small plans. As a result, the undersigned certifies that this final rule does not have a significant impact on a substantial number of small entities. The factual basis for this certification is the same regardless of whether one uses the definition of small entity found in regulations issued by the Small Business Administration (13 CFR 121.201) or one defines small entity, on the basis of section 104(a)(2) of ERISA, as an employee benefit plan with fewer than 100 participants.

Small Business Regulatory Enforcement Fairness Act

The rule being issued here is subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*) and has been transmitted to Congress and the Comptroller General for review. The rule 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 rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments, and will not impose an annual burden of \$100 million or more on the private sector.

Federalism Statement

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. 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 supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. 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 elimination of superseded regulations from the CFR and correction of cross-references ensure consistency

between regulations and statutory requirements, and do not alter the fundamental requirements of the statute with respect to the reporting and disclosure requirements for employee benefit plans, and as such has no implications for the States or the relationship or distribution of power between the national government and the States.

Statutory Authority

This final rule is promulgated pursuant to the authority contained in section 505 of ERISA (Pub. L. 93-406, 88 Stat. 894, 29 U.S.C. 1135) and sections 101(b) and 104(a)(1) of ERISA, as amended, and under the Secretary of Labor’s Order No. 1-87, 52 FR 13139, April 21, 1987.

List of Subjects

29 CFR Part 2520

Employee benefit plans, Group health plans, Pension plans, Welfare benefit plans.

29 CFR Part 2560

Claims, Employee benefit plans, Law enforcement, Pensions.

For the reasons set forth above, parts 2520 and 2560 of Chapter XXV of Title 29 of the Code of Federal Regulations are amended as follows:

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).

§ 2520.102-1 [Removed]

2. Section 2520.102-1 is removed and reserved.

3. Revise § 2520.102-4 to read as follows:

§ 2520.102-4 Option for different summary plan descriptions.

In some cases an employee benefit plan may provide different benefits for various classes of participants and beneficiaries. For example, a plan amendment altering benefits may apply to only those participants who are employees of an employer when the

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

4. Revise paragraph (a) of § 2520.104-4 to read as follows:

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

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

affected by the terms of the merged plans.

* * * * *

5. Revise the introductory text in paragraph (a) and paragraphs (a)(2), (a)(3), and (c) of § 2520.104-20 to read as follows:

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

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of the Act. Specifically, the administrator of such plan is not required to file with the Secretary an annual or terminal report. In addition, the administrator of a plan exempted under this section—

* * * * *

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

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

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and which authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

6. Amend § 2520.104-21 by revising paragraphs (a) and (c) to read as follows:

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

(a) *Scope.* Under the authority of section 104(a)(3) of the Act, the administrator of any employee welfare benefit plan which covers fewer than 100 participants at the beginning of the plan year and which meets the requirements of paragraph (b) of this section is exempted from certain reporting and disclosure provisions of

the Act. Specifically, the administrator of such plan is not required to file with the Secretary a terminal report or furnish upon written request of any participant or beneficiary a copy of any terminal report as required by section 104(b)(4) of the Act.

* * * * *

(c) *Limitations.* This exemption does not exempt the administrator of an employee benefit plan from any other requirement of title I of the Act, including the provisions which require that plan administrators furnish copies of the summary plan description to participants and beneficiaries (section 104(b)(1)), file an annual report with the Secretary of Labor (section 104(a)(1)) and furnish certain documents to the Secretary of Labor upon request (section 104(a)(6)), and authorize the Secretary of Labor to collect information and data from employee benefit plans for research and analysis (section 513).

* * * * *

§ 2520.104-23 [Amended]

7. Section 2520.104-23 is amended by removing from paragraph (b)(2) the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

§ 2520.104-24 [Amended]

8. Section 2520.104-24 is amended by removing from paragraph (b) the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

§ 2520.104-25 [Amended]

9. Section 2520.104-25 is amended by removing the term "104(a)(1)" and adding, in its place, the term "104(a)(6)".

10. In § 2520.104-26, revise paragraph (a) to read as follows:

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

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

(1) In lieu of filing an annual report with the Secretary or distributing a summary annual report, a filing is made of Report Form LM-2 or LM-3, pursuant to the Labor-Management

Reporting and Disclosure Act (LMRDA) and regulations thereunder, and

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

* * * * *

11. In § 2520.104-27, revise paragraph (a) to read as follows:

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

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

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

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

* * * * *

§ 2520.104-43 [Amended]

12. Section 2520.104-43 is amended by removing from paragraph (a) the term “section 104(a)(1)(A)” and adding, in its place, “section 104(a)(1)”.

§ 2520.104-44 [Amended]

13. Section 2520.104-44 is amended by removing from paragraph (d) the term “section 104(a)(1)(A)” and adding, in its place, “section 104(a)(1)”.

§ 2520.104a-2 [Removed]

14. Section 2520.104a-2 is removed and reserved.

§ 2520.104a-3 [Removed]

15. Section 2520.104a-3 is removed and reserved.

§ 2520.104a-4 [Removed]

16. Section 2520.104a-4 is removed and reserved.

§ 2520.104a-5 [Amended]

17-18. Section 2520.104a-5 is amended by removing from paragraph (a) the term “section 104(a)(1)(A)” and adding, in its place, the term “section 104(a)(1)”; and by removing and reserving paragraph (a)(1).

§ 2520.104a-7 [Removed]

19. Section 2520.104a-7 is removed and reserved.

§ 2520.104b-1 [Amended]

20. Section 2520.104b-1 is amended by removing from the third sentence of paragraph (b)(3) the term “plan description”.

21. In § 2520.104b-2, revise paragraph (g)(1) to read as follows:

§ 2520.104b-2 Summary plan description.

* * * * *

(g) *Terminated plans.* (1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this section, the plan has terminated within the meaning of paragraph (g)(2) of this section, the administrator of such plan is not required to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

* * * * *

§ 2520.104b-3 [Amended]

22. Section 2520.104b-3 paragraphs (f) and (g) are removed and reserved.

PART 2560—RULES AND REGULATIONS FOR ADMINISTRATION AND ENFORCEMENT

23. The authority citation for part 2560 continues to read as follows:

Authority: Secs. 502, 505 of ERISA, 29 U.S.C. 1132, 1135, and Secretary’s Order 1-87, 52 FR 13139 (April 21, 1987).

Section 2560.502-1 also issued under sec. 502(b)(2), 29 U.S.C. 1132(b)(2).

Section 2560.502i-1 also issued under sec. 502(i), 29 U.S.C. 1132(i).

Section 2560.503-1 also issued under sec. 503, 29 U.S.C. 1133.

§ 2560.502c-2 [Amended]

24. Section 2560.502c-2 is amended by removing from paragraph (a)(1) and (a)(2) the term “section 101(b)(4)” each

time it appears and adding, in its place, the term “section 101(b)(1)”.

Signed at Washington, DC, this 22nd day of December, 2001.

Ann L. Combs,

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

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Parts 2520, 2560 and 2570

RIN 1210-AA67, RIN 1210-AA68

Furnishing Documents to the Secretary of Labor on Request Under ERISA Section 104(a)(6) and Assessment of Civil Penalties Under ERISA Section 502(c)(6)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains a final rulemaking under the Employee Retirement Income Security Act of 1974 (ERISA) that implements certain amendments to ERISA added as part of the Taxpayer Relief Act of 1997 (TRA '97). The final rule implements section 104(a)(6) of ERISA by requiring the administrator of an employee benefit plan subject to Part 1 of Title I of ERISA to furnish to the Department, upon request, certain documents relating to the employee benefit plan. The final rule also establishes procedures relating to the assessment of civil penalties for failures or refusals by administrators to furnish requested documents to the Department and establishes procedures for review of such penalties by the Department. The final rule affects employee pension and welfare benefit plans, plan sponsors, administrators and fiduciaries, and plan participants and beneficiaries.

DATES: This regulation is effective March 8, 2002.

FOR FURTHER INFORMATION CONTACT: Lisa M. Fields, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (202) 693-8500 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

A. Background

The Taxpayer Relief Act of 1997 (TRA '97) eliminated the requirement under ERISA that employee benefit plan administrators automatically file