

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

RIN 1210-AA52

Proposed Revisions to Certain Regulations Regarding Annual Reporting and Disclosure Requirements**AGENCY:** Pension and Welfare Benefits Administration, Labor.**ACTION:** Notice of proposed rulemaking

SUMMARY: This document contains proposed 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). In part, the amendments contained in this document are necessary to conform the regulations to the previously published revisions to the annual return/report forms (Form 5500 Series) 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, 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 proposed amendments contained in this document would modify the reporting requirements for certain group insurance arrangements. The remaining amendments are technical in nature and are designed to either simplify or clarify the existing reporting regulations. If adopted, 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: Written comments on the proposed regulations must be received by the Department on or before February 8, 1999.

ADDRESSES: Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N-5669, Pension and Welfare Benefits Administration, U.S. Department of

Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, ATTENTION: Proposed Amendments to Annual Reporting Regulations. All written comments should clearly reference the relevant proposed amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Eric A. Raps, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, (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 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.

During the last two years, the Department's Pension and Welfare Benefits Administration (PWBA), the Internal Revenue Service and the Pension Benefit Guaranty Corporation (the Agencies) 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 Notice of Proposed Forms Revisions soliciting public comments on proposed revision of the Form 5500 Series was published in the **Federal Register** on September 3, 1997 (62 FR 46556). The Agencies' proposal replaced the Form 5500, Form 5500-C and Form 5500-R with one Form 5500 intended to streamline the report and the methods by which it is filed. Concurrent with the development of the new forms, the Agencies are also developing a new computerized system

to process the Form 5500 (the ERISA Filing Acceptance System or "EFAST"). The new computerized processing system is designed to simplify and expedite the receipt and processing of the new Form 5500 by relying on computer scannable forms and electronic filing technologies. The overall proposal is intended to streamline and improve the Form 5500 Series and lower the administrative burdens and costs incurred by the more than 800,000 employee benefit plans that file the Form 5500 Series each year. A public hearing on the proposed forms revisions was held on November 17, 1997, and written comments on the proposal were received until the public record was closed on December 3, 1997. 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. 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.

Public reaction to the September 3, 1997 Notice of Proposed Forms Revisions was generally supportive of the new streamlined structure of the Form 5500 Series. The Agencies, accordingly, decided to adopt the new reporting structure largely as proposed. In response to public comments, the Agencies made various adjustments to the proposed forms and instructions where consistent with the purposes of the Form 5500 and the objectives of the streamlining project. A revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act 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 submission. 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 Paperwork Reduction Act review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. The approval is conditioned on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor technical adjustments to

the form.¹ After the computer scannable versions of the new forms and electronic filing options are developed as part of the EFAST project, the Agencies intend to publish a **Federal Register** notice soliciting public comments. The final computer scannable version of the forms which will be required to be used for 1999 plan year filings will be published in the **Federal Register** following the Agencies' evaluation of public comments.

The proposed amendments published herein to the Department's annual reporting regulations (Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations) are intended, in major part, to make the technical and conforming changes to the regulations necessary to implement the new Form 5500 Series. As stated in the September 3, 1997 Notice of Proposed Forms Revisions, the new Form 5500 Series will not become effective as an alternative method of compliance and limited exemption from the reporting and disclosure requirements of part 1 of Title I of ERISA until these regulations are issued in final form.

B. Request for Comments

Interested persons are invited to submit written comments (preferably three copies) concerning the proposals herein to: Office of Regulations and Interpretations, Room N-5669, Pension and Welfare Benefits Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, DC 20210, Attention: Proposed Amendments To Annual Reporting Regulations. All written comments should clearly reference the relevant proposed amendment(s). All submissions will be open to public inspection in the Public Disclosure Room, Pension and Welfare Benefits Administration, Room N-5638, 200 Constitution Avenue, N.W., Washington, D.C.

The regulatory amendments proposed herein do not involve revisions to the Form 5500 Series itself and generally do

not announce changes to the annual reporting requirements for employee benefit plans in addition to those described in the previously published forms revisions. The Agencies in developing the revisions to the Form 5500 Series previously considered the comments submitted in response to the September 3, 1997 Notice of Proposed Forms Revisions and the June 24, 1998 Notice. Those comments will be treated as part of the public record for this Notice of Proposed Rulemaking, and, to the extent those comments include information relevant to the regulatory amendments proposed herein, the Department will treat those comments as comments on this Notice of Proposed Rulemaking to avoid the need to submit duplicate public comments.

C. Discussion of the Proposal

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 Notice of Proposed Forms Revisions for improving the Form 5500 Series and reducing the reporting burden on filers was the development of one Form 5500 for use by both "large plan" filers (plans that previously filed the Form 5500) and "small plan" filers (plans that previously were eligible to file the Form 5500-C/R) that was structured along the lines of tax returns familiar to individual and corporate taxpayers "a simple one-page 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. The Form 5500-C/R is being eliminated, but limited financial reporting options for small plans are being maintained.² To accommodate these form changes, the proposed regulatory amendments would update the references in § 2520.103-1 to the annual report to reflect the new structure of the Form 5500.³

2. Section 2520.103-2

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

under § 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, including any required schedules, 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). The Department is proposing amendments to § 2520.103-2 that are consistent with the changes proposed for § 2520.103-1, as applicable, and §§ 2520.104-21 and 2520.104-43 (described in section C.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. The Schedule D is intended to serve as a multipurpose schedule for reporting certain information on relationships between plans and entities that are classified as "Direct Filing Entities" or DFEs, including investment entities covered under § 2520.103-12, master trust investment accounts, common or collective trusts (CCTs), pooled separate accounts (PSAs), and GIAs. In the case of GIAs, the new Schedule D would be a standardized form that GIAs would be required to use to satisfy the current requirement to file a list of participating plans. (See discussions below of CCTs, PSAs, master trusts and 103-12 investment entities for more information on applicable requirements for plans and entities required to file the new Schedule D).

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

(a) Common/Collective Trusts and Pooled Separate Accounts

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 need not include information regarding the individual transactions of the entity in the plan's annual report. Rather, the plan must

¹ The conditions regarding form changes 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 H regarding the inapplicability of the "short plan year" provisions of 29 CFR 2520.104-50 to Direct Filing Entity Form 5500s filed for group insurance arrangements and investment entities described in 29 CFR 2520.103-12 (103-12 IEs).

² For example, plans eligible to file as small plans that take advantage of the simplified reporting rules would continue to be exempt from the annual audit requirements contained in ERISA § 103 and would continue to be relieved of the obligation to file certain schedules required for large plan filers (e.g., Schedule C—Service Provider Information).

³ The proposal also would 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).

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 § 2520.103-9, exempts plans from including a statement of the assets and liabilities of the CCT and/or PSA with their annual report if the bank, trust company or insurance carrier sponsoring the CCT or PSA, respectively, files its statement of assets and liabilities directly with the Department and certain other conditions are met. The statement of assets and liabilities of a CCT and PSA is not required to be reported in a standardized format. The absence of standardized reporting for CCTs and PSAs has made it virtually impossible for the Department to correlate and effectively use the data regarding the approximately 226.2 billion dollars in plan assets held by CCTs and PSAs. The Department has concluded that a change in the current reporting rules is needed to enable it to continue to satisfy its research and enforcement responsibilities.

Under the proposed forms revisions, as under the current Form 5500 Series, CCTs and PSAs may elect to file information on behalf of their participating plans. As noted above, the revisions to the Form 5500 Series include a new Schedule D (DFE/Participating Plan Information). The Schedule D is a standardized schedule for filing certain information on relationships between plans and CCTs and PSAs (as well as other entities that are classified as "Direct Filing Entities" or DFEs, including investment entities covered under § 2520.103-12, master trust investment accounts, and GIAs). In the case of a CCT or PSA that elects to file as a DFE, the CCT or PSA would be required to complete: (1) applicable items on the revised Form 5500; (2) one or more Schedules 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 the CCT or PSA invested in during the year; and (3) 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 which file as a DFE would report the value of its respective interests in each of these entities as a single entry on the appropriate lines in

the plan's asset and liability statement 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 would report on the plan's Schedule H income and expense statement the net investment gain/loss for the DFE as part of a single entry for each class of DFE. As indicated previously, the new Schedule D (DFE/Participating Plan Information) would be added to the Form 5500. The Schedule D would be required to be attached to the plan's Form 5500 to report information about the plan's participation in CCTs and PSAs.

In the case of small plans with CCT or PSA investments, regardless of whether the CCT or PSA files directly with the Department, the small plan would file a Schedule D, but would 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 would not change significantly from the current reporting requirements. Similarly, except for the addition of Schedule H (Part II), generally the information that would be filed by a CCT or PSA that elects to file as a DFE would be substantially the same as the current reporting requirements with the major change being that the information would be required to be filed on the Form 5500 as the standard reporting format for all filers.

If a CCT or PSA does not file a Form 5500 as a DFE, large employee benefit plans would be required to 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 would 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 other general investment categories on the Schedule H, such as: 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. Further, 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. Furthermore, large plan filers investing in CCTs and PSAs that do not file as DFEs would 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 would 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 would be reported on the schedule of assets held for investment and the Schedule D).

The Department believes that changing the reporting requirements for plans investing in CCTs and PSAs is the only viable alternative for capturing the information needed to carry out its oversight responsibilities about plan assets and ensuring that there is adequate disclosure of plan investment information 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. The Department views the proposed changes as important and necessary in light of the dramatic growth in the value of plan assets held by CCTs and PSAs. For example, the value of plan assets invested in CCTs and PSAs increased between 1990 and 1995, the latest year for which information is available, from \$113.9 billion to \$226.2 billion. In order to minimize the costs and paperwork burdens on CCTs and PSAs associated with this proposal, it is anticipated that processing improvements would be implemented in the near future so this information could be filed with the Department either via magnetic media (magnetic tapes, floppy diskettes) or other electronic means.

(b) 103-12 Investment Entities and Master Trusts

Section 2520.103-1(e) provides for special reporting rules for plans that participate in a master trust. In general, a master trust is a trust maintained by a bank or similar institution to hold the assets of several plans that are all sponsored by a single employer or by several employers which are under common control. Such plans must report the value of their interest in the

master trust as a single asset category in the plan's statement of assets and liabilities. The plan's share of earnings, realized and unrealized gains and losses of the master trust is reported in the plan's statement of income, expenses and changes in net assets for the plan year. A separate annual report for the master trust is required under current rules. The proposed amendments to § 2520.103-1(e) do not change the information required to be reported regarding the master trust, but rather establish the Form 5500 Series as the standard reporting format for master trusts.

Similarly, 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 section 2510.3-101. Under the alternative method, the plan administrator need not include in the plan's annual report any information regarding the underlying assets and individual transactions of the 103-12 investment entity. Instead, the administrator is required to report only the value of the plan's investment or units of participation in the investment entity. As a condition to using this alternative, however, certain information must be filed by the 103-12 investment entity directly with the Department. The proposed amendments to § 2520.103-12(b) do not change the information required to be reported by the 103-12 investment entity, but rather establish the Form 5500 Series as the standard reporting format.

4. Section 2520.103-5

Section 2520.103-5 implements section 103(a)(2) of the Act. Section 103(a)(2) of the Act requires insurance carriers or other organizations which provides some or all of the benefits under a plan or holds plan assets, banks or similar institutions which holds plan assets, and plan sponsors to 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 a plan participating in a CCT or PSA generally will be affected by whether such CCT or PSA directly files with the Department, section 2520.103-5 is proposed to be modified to conform to the new direct filing entity (DFE) reporting regime and ensure that administrators have adequate advance knowledge about their reporting responsibilities.

In the case of a CCT or PSA, the proposed amendments would require that such CCT or PSA notify its

participating plans of whether or not 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. These notifications must be made within the same period of time for transmitting information already required by existing § 2520.103-5 (i.e., 120 days after the close of each participating plan's plan year). The proposal does not contain any detailed rules relating to the manner of the exchange of information between the plan and the CCT or PSA. The Department has decided to let the plan administrator develop with the sponsor 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. This does not, of course, relieve the plan administrator of the responsibility to monitor the conduct of the CCT or PSA sponsor and to obtain whatever financial information concerning the CCT or PSA that is necessary for the administrator to satisfy his or her obligations under ERISA.

The proposed forms revisions did not affect the information required from plan sponsors and the Department is not proposing any amendment to the plan sponsors' obligations described in § 2520.103-5.

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. 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). The new Form 5500 as proposed would have eliminated for large plan filers the requirement to file with their annual report a schedule of reportable (5%) transactions (line 27d of the current Form 5500) and schedules of assets held for investment (line 27a of the current Form 5500). Although the Department proposed in September 1997 to remove the requirement to submit the line 27a and line 27d schedules as part of the annual report, the proposal attempted to preserve affected participants' access to the information by providing them with the right to request and receive reportable transaction information and a

detailed list of investments. In developing the proposed forms revisions, the Department estimated that fewer than 60,000 plans out of the over 800,000 pension and welfare benefit plans that file an annual report would be affected by this aspect of the proposal. Because the 60,000 affected plans are larger plans, the filing of schedules detailing plan investments often involves substantial amounts of paper. As proposed, the new Form 5500 would still have required a financial statement reflecting assets on an aggregate rather than individual basis, and the affected plans would have still have been subject to an annual audit by an IQPA. Finally, there did not seem to be a substantial need for the schedules to be on file at the Department's public disclosure room because the Department receives only a small number of requests per year for copies, and the Department could make a request for copies from the plan administrator on behalf of any plan participants or beneficiaries.

The Department, however, received public comments on the proposal that raised serious concerns about adverse consequences of eliminating these schedules from the annual report. In light of those comments and testimony received at the November 17, 1997 hearing on the proposed forms revisions, the Department has decided not to adopt this change. The Department nonetheless believes that it is possible to make a number of modifications to these schedules to eliminate certain burdens associated with the production of information that is already available to participants and beneficiaries. Accordingly, the proposal amends the reportable transactions rules to no longer require that transactions effected at the affirmative direction of participants or beneficiaries under an individual account plan be taken into account when completing the schedule of reportable transactions. Because of the administrative burdens and recordkeeping complexity associated with compiling aggregate cost of assets for which investment decisions are directed by participants and beneficiaries, the proposal also eliminates for such participant directed assets the requirement to prepare the "historical cost" entry on the schedules of assets held for investment. The proposal would not relieve the administrator from including in the schedules of assets held for investment descriptions and current values for assets held at a participant's or beneficiary's direction. Finally, the IQPA's opinion must cover the schedule

of reportable transactions and schedules of assets held for investment.

The proposed regulation would also provide that, solely for purposes of this reporting relief, a transaction will be considered "directed" by a participant or beneficiary to the extent that the individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account. This reporting relief is broader than the fiduciary liability relief prescribed by § 2550.404c-1 that applies to a narrower class of transactions in which participants and beneficiaries exercise control over the assets involved in the transaction.

Because the proposal retains the schedule of reportable transactions and schedules of assets held for investment as part of the annual report primarily to meet participant disclosure concerns, not to satisfy research and enforcement needs, the Department is not requiring use of a standardized computer scannable form for the schedule of reportable transactions or schedules of assets held for investment (unlike the Schedule G which will be mandatory for the other financial transaction schedules). Rather, administrators would be allowed to use any format for preparing the schedule of reportable transactions and schedules of assets held for investment 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 (electronic filing requirements for these schedules will be developed as part of the, previously described, EFAST project).

The Department is also proposing to amend section 2520.103-6 to include a special rule for the reportable transaction schedule for initial plan years. Section 2520.103-6(b)(1)(i) currently requires that the 5% thresholds for reportable transactions be calculated using current value of assets as of the beginning of the initial plan year. Concerns have been expressed by filers that in most cases the current rule results in virtually all investment transactions during the initial plan year being reportable transactions under section 2520.103-6. The Department does not believe that this result was intended under ERISA inasmuch as the purpose of the reportable transaction rules was to identify transactions relating to a significant portion of the plan's assets because these transactions may pose the greatest financial risk to a plan. Accordingly, the Department is proposing that the current value of plan assets for purposes of preparing the schedule of reportable transactions for the initial plan year would be the

current value of plan assets at the end of the initial plan year.

6. Section 2520.103-10

Section 2520.103-10 identifies the financial schedules that are required to be included with the filing of the Form 5500. The Department is proposing to amend § 2520.103-10 to conform it to the new Form 5500 and other regulatory amendments described elsewhere in this preamble. Accordingly, as proposed, § 2520.103-10 would be amended to update references to the annual report financial schedules to conform the references to the schedules associated with the new Form 5500.

Further, under the proposal, the use of the revised Schedule G will be mandatory for the schedule of party in interest transactions, schedule of obligations in default, and schedule of leases in default. These schedules are now required by lines 27b, 27c, 27e and 27f of the current Form 5500 and may be filed using a similar format and using the same size paper as the current Schedule G. Because the Department will be developing and implementing a new system to simplify and expedite the receipt and processing of the Form 5500 Series by using optical scanning technology and optical character recognition, it would not be possible for the Department to process Schedule G information and include such information in our data base unless the use of Schedule G is mandatory. The proposed Schedule G would have to be attached to the Form 5500 of a large plan, master trust investment account or 103-12 IE to report loans or fixed income obligations in default or determined to be uncollectible as of the close of the reporting year (Part I of Schedule G), leases in default or classified as uncollectible during the plan year (Part II of the Schedule G) and nonexempt transactions (Part III of the Schedule G).

The proposed changes to the schedule of reportable transactions and the schedules of assets held for investment (which are not included on the new Schedule G) are discussed in paragraph C.5 of this preamble.

7. Section 2520.104-21 and Section 2520.104-43

Section 2520.104-21 provides an exemption from certain Title I reporting and disclosure requirements for welfare plans that are part of a group insurance arrangement (GIA) as defined in paragraph (b) of that regulation.⁴ The

exemption is available for welfare plans which have fewer than 100 participants and which are part of a GIA, if the arrangement, among other things, uses a trust (or other entity such as a trade association) as the holder of the insurance contracts and the conduit for payment of premiums to an insurance company. See § 2520.104-21(b)(3). Section 2520.104-43 provides plans (regardless of whether such plans have 100 or more participants) with relief from filing the annual report in cases where the GIA described in § 2520.104-21 files a Form 5500 report on behalf of all the participating plans. The Department is proposing to amend §§ 2520.104-21 and 2520.104-43 to provide that the exemptions would only be available in those cases in which the GIA utilizes a trust as the conduit for the payment of the premiums. The proposal also would modify the examples in paragraph (d) of § 2520.104-21 to reflect these changes. The Department believes that interpreting the reporting exemption as providing GIAs with an exemption from the substantive requirement to hold plan assets in trust is not in the interest of participants and beneficiaries, and needs correction. Indeed, adoption of the proposed amendment would conform the reporting regulations for GIAs with ERISA § 403 and § 2550.403a-1, which do not provide a trust exception for GIAs. The Department does not envision that the proposed amendment will create administrative burdens for GIAs or result in increased costs for participating plans because the plan assets collected and held by the intermediary entity must be separately accounted for under current law.⁵ The Department is also proposing that this

descriptions of material modifications in the terms of a plan or changes in the information required to be included in the summary plan description. Section 1503 of The Taxpayer Relief Act of 1997 (TRA 97), Pub. L. 105-34 (enacted August 5, 1997), amended ERISA by repealing the requirement to file the aforementioned documents with the Department. A separate notice of proposed rulemaking will be published by the Department to conform these regulations to TRA 97.

⁵ The proposed amendment, if adopted, also would be consistent with the enforcement policy in ERISA Technical Release 92-01 (TR 92-01) (57 FR 23272 and 58 FR 45359). TR 92-01 announced interim relief from the trust and certain reporting requirements of ERISA for certain contributory welfare plans. TR 92-01, however, does not apply to § 2520.104-21 GIAs or to participant contributions after they have been segregated from an employer's general assets and transmitted to an intermediary account. Thus, if the proposed amendment is adopted as a final rule, participating cafeteria plans may continue to rely on the enforcement policy contained in TR 92-01 until participant contributions are transmitted to the GIA, but the GIA would be required to hold plan assets in trust.

⁴ For example, section 2520.104-21 provides relief to certain welfare plans from the requirement to file a copy of the summary plan description and

change, if adopted, would be effective for plan years beginning after Dec. 31, 1998, to coincide with the 1999 plan year implementation of the new Form 5500.

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 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 have proposed to replace the Form 5500 and the Form 5500-C/R with an improved single Form 5500 for use by both large and small plan filers, with simplified reporting options for small plans incorporated into the new restructured forms. This proposal would amend §§ 2520.104-41 and 2520.104-46 to conform the terms in the regulations to the new Form 5500 Series.

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 Department has received inquiries from the public about the reporting requirements 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 current Form 5500 Series instructions provide for limited reporting for these types of pension plans. 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. See the Department's Information Letter issued to Gary H. Friedman (dated November 15, 1996). The Department, therefore, is proposing to make conforming technical amendments to § 2520.104-44 to clarify the annual reporting obligations of such plans.

10. Section 2520.104b-10

Section 2520.104b-10 sets forth the requirements for the summary annual report (SAR) and prescribes the formats for such reports. The proposed amendments to section 2520.104b-10 would make the SAR requirements

conform to the new Form 5500 Series (e.g., by referring to the modified list of the attached statements and schedules to the Form 5500). The proposed amendments also would 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 is proposed to be eliminated, small plans will be required to furnish a SAR every year rather than every third year. Although the reporting statistics indicate that approximately 50 percent of small filers file the Form 5500-C every year and, therefore, would not be eligible for the alternative method of compliance, the Department seeks comments as to the burdens associated of complying with proposed § 2520.104b-10, if any, for small plan filers who would no longer be able to file a Form 5500-R. The proposed amendments to §§ 2520.104b-10(d)(3) and 2520.104b-10(d)(4) also restate the information available to participants and beneficiaries under the heading "Your Rights to Additional Information" so that it is consistent with the new Form 5500 Series. These proposed changes are expected to improve the process by which information is disclosed to participants and beneficiaries of small plans which currently file the Form 5500-R.

The existing regulations contain a cross-reference guide as an appendix. The purpose of this guide is to correspond the line items of the SAR to the line items on the Form 5500 and Form 5500-C. The Department intends to publish as part of the final regulation a revised appendix to conform it to the final version of the new Form 5500 and associated schedules.

D. 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 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 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). As indicated in the preamble to the notice of proposed forms revisions, the Department stated that 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 would be separately addressed as part of the rulemaking that would amend the reporting regulations necessary to implement the new Form 5500 Series.

1. General Findings

As reflected in the revisions to the Form 5500 Series and the amendments proposed herein, a number of changes are being proposed which affect the information required to be reported and disclosed on the Form 5500 Series. The Department, in the proposed amendments, 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. In view of these changes, the Department proposes to make 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 of ERISA 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 proposed revisions to the Form 5500, would be inappropriate in the context of welfare plans for the reasons discussed in this preamble and

the preamble to the notice announcing the proposed forms revisions.

2. *Special Findings*

(a) Schedule A (Insurance Information)

Schedule A must be attached to the annual report if any pension or welfare benefits under any ERISA covered plan are provided by, or if the plan holds any investment contracts with, an insurance company or other similar organization. Although most of the Schedule A data has been retained substantially unchanged, certain changes were made to the Schedule A to more closely conform the Schedule A to recent accounting industry changes on "current value" financial reporting of investment-type contracts with insurance companies,⁶ 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 general, under the current Form 5500 Series, the financial reporting required for insurance products is not identical to the reporting for other financial products.⁷ 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 best interests of plan participants, with generally accepted accounting principles (GAAP). The Schedule A changes proposed by the Department are intended to be consistent with the Financial Accounting Standards Board (FASB) 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 are equally important for small as well as large plans, the proposal would not provide different Schedule A reporting

standards depending on the size of the plan. The Department also believes that the additional information being required to identify the type of insurance product purchased and NAIC code and EIN of the insurance company (or similar organization) from which the product was sold are helpful to the Department being able to accomplish its oversight responsibilities, and will not be burdensome to plans inasmuch as this information should be readily available.

(b) Schedule C (Service Provider Information)

Schedule C must be attached to the Form 5500 filed by large plan filers if any person who rendered services to the plan received directly or indirectly \$5,000 or more in compensation from 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 service provider terminations to terminations of accountants and enrolled actuaries, and limiting the number of plan service providers required to be reported to the forty top paid service providers at or above the \$5,000 threshold. The Department notes that trustee and plan administrator information already must be disclosed in the summary plan description (SPD), and changes in trustees and plan administrators 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, 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. Similarly, comparing annual Schedule A filings will provide information on changes in insurers. With respect to limiting of Schedule C list of service providers to the forty top paid providers receiving \$5,000 or more in compensation, only approximately 100 employee benefit plans filing the 1994 Form 5500 listed more than 40 service providers on their Schedule Cs. Those 100 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

⁶ERISA § 3(26) defines "current value" as fair market value where available and otherwise 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.

⁷See, for example, the instructions for line 31c(16) of the 1997 Form 5500.

described herein would not affect the annual reports of those plans.

(c) Schedule D (Direct Filing Entity/ 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 for small plans of the Schedule D requirement to report year-end dollar value of interests in 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. Compare the new Form 5500 Series with the 1997 Form 5500 and Form 5500-C/R instructions for line 6e and page 4 instructions for additional information that must be reported for plans participating in CCTs, PSAs, master trusts, 103-12 IEs, and group insurance arrangements. Similarly, substantially all of the information that would be required to be reported by DFEs is currently required to be filed by CCTs, PSAs, MTIAs, 103-12 IEs and GIAs. Compare the new Form 5500 Series with the 1997 Form 5500 and Form 5500-C/R page 6 instructions on filing requirements for CCTs, PSAs, master trusts and 103-12 IEs, and the Form 5500 line 1 instructions for GIAs.⁸ 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. The Department does not believe the proposed 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 proposed forms revision. 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 \$1 trillion in plan assets invested by plans in DFEs, and, therefore, 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

With regard to exclusion of certain participant directed transactions under an individual account plan from the schedule of reportable transactions, and the deletion of the requirement to include historical cost information in the schedules of assets held for investment on those transactions, the Department believes, on the basis of its enforcement experience, that the revised schedules will still result in adequate reporting to the Department and will not hamper its ability to identify fiduciary violations. The underlying purpose for the schedule of reportable transactions is to identify significant transactions that may reveal fiduciary misconduct. In general, individualized information on participant directed transactions is not especially relevant to that purpose. Similarly, historical cost on the schedules of assets held for investment is intended to provide individualized 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 does not provide meaningful information on the gain or loss to a particular participant's account resulting from individually directed transactions. For those reasons, the Department does not believe having this information on the annual report is useful in targeting its enforcement cases, but including this participant directed transaction information in these schedules will result in additional costs and administrative burdens to plans. In light of the purposes underlying the reportable transaction schedule and the historical cost requirement, the Department believes that these schedules will still provide adequate disclosure to plan participants and beneficiaries.

Other Supplementary Information

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) 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 which are likely to have a significant economic impact on a substantial number of small entities. If an agency determines that a proposed rule is likely to have a significant economic impact on a substantial number of small entities, section 603 of the RFA requires that the agency present an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities, and seeking public comment on such impact. Small entities include small businesses, organizations, and governmental jurisdictions.

For purposes of analysis under the RFA, PWBA proposes to continue to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of the Employee Retirement Income Security Act of 1974 (ERISA), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans which cover less 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 ERISA section 104(a)(3), the Department has previously issued at §§ 2520.104-20, 2520.104-21, 2520.104-41, 2520.104-46 and 2520.104b-10 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.

Further, while some large employers may have small plans, in general, most small plans are maintained by small employers. Thus, PWBA believes that assessing the impact of this proposed rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business which is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 *et seq.*). PWBA, therefore, requests comments on the appropriateness of the size standard used in evaluating the

⁸In 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).

impact of this proposed rule on small entities. PWBA has consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes. See 13 CFR § 121.902(b)(4).

On this basis, however, PWBA has preliminarily determined that this rule will not have a significant economic impact on a substantial number of small entities. In support of this determination, and in an effort to provide a sound basis for this conclusion, although not required, PWBA considers the elements of an initial regulatory flexibility analysis to be as follows:

(1) The Department is promulgating this proposed 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 Series).

(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: the use of the alternative method is consistent with the purposes of ERISA and provides adequate disclosure to participants and beneficiaries and the Secretary, 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 the application of the statutory reporting and disclosure requirements would be adverse to the interests of plan participants in the aggregate.

The Department proposes to find 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 would relieve plans of all sizes from increased costs and unreasonable burdens 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, proposed 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 proposed 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 proposed 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 proposal small plans would continue to be exempt from reporting service provider information and supplying the report of an independent qualified public accountant. In addition, the conforming rules as proposed generally preserve the more limited reporting for small plans which is presently in effect.

(4) Based on information available from 1993 Form 5500 filings, the Department estimates that there are approximately 6.7 million small pension and welfare benefit plans that are covered under Title I of ERISA. About 6 million of these plans with fewer than 100 participants are insured or unfunded welfare benefit plans, which are currently exempt from Form 5500 filing requirements and will continue to be exempt under the proposed revisions to the Form 5500 Series. The proposed rules therefore, will have no impact on these small plans. Thus, approximately 700,000 small plans, or about 9% of all small plans, are required to file the existing Form 5500 Series, and will be impacted by the proposed rules conforming existing regulations to the revised Form 5500 Series.

(5) The revisions to the Form 5500 Series are estimated to impose no additional filing burden on small plans than that of the current forms over the existing three-year filing cycle. In fact, a comparison of the burden associated with the existing reporting requirements with the revisions to the Form 5500 Series indicates an overall reduction in the burden for small plans based on the number of data elements required to be reported for each.

Under current filing requirements, small plans must file a Form 5500-C at least once every three years and file the less detailed Form 5500-R in the two intervening years. While the ratio of Form 5500-R to Form 5500-C filings varies from year-to-year, on average about 55% of all annual small plan

filings are on the Form 5500-R and 45% are on the Form 5500-C because many small plans annually file the Form 5500-C.

The burden associated with completion of the Form 5500 Series can be divided into two steps: reading the instructions and completing the individual line items. The revised Form 5500 Series requires small plans to provide more line item information than the Form 5500-R, but less information than the Form 5500-C. The burden associated with completion of all required items on the revised form is estimated to be 5% greater than the Form 5500-R and 32% less than the Form 5500-C. Based on a ratio of the Form 5500-R to Form 5500-C filings of 55% to 45%, the proposed revisions to the Form 5500 Series are estimated to result in an average reduction of 15% in the burden associated with completion of the revised form items.

The more efficient format of the revisions to the Form 5500 Series, with most of the information broken out into separate schedules, should also reduce the time required to read the instructions because filers will be able to skip over the instructions for schedules that do not apply to them. It is, however, expected that all filers will require additional time in the initial year of filing to thoroughly read the instructions and to familiarize themselves with the revised Form 5500 Series. It is, therefore, assumed in the initial year of filing the revised Form 5500 Series that additional time required for instruction reading will result in an overall burden (including the reduction for line items) that on average will be 26% greater than the annual burden for completion of the Form 5500-C/R. It is assumed that most filers will not require this additional time in subsequent years, and that the average reduction will be the 15% based on the reduction in the number of line items.

When the higher burden associated with instruction reading is pro-rated over a three-year period (corresponding with the existing three-year cycle of Form 5500-C and Form 5500-R filings) the annual burden imposed by the proposed revisions to the Form 5500 Series for the typical filer is estimated to be 2% less than that of the Form 5500-C/R. When the initial year burden is pro-rated over a 10-year period, the proposed revision to the Form 5500 Series is estimated to result in an 11% reduction in the annual burden for small plans.

Entry of the information required by the Form 5500-C/R is made from financial and other records maintained

by plans. Sound accounting and general business practices would generally dictate that all or most of these records be maintained even in the absence of a reporting requirement. To the extent that specific records are kept only for reporting purposes it is assumed that small plans currently maintain on an annual basis all records necessary to complete the Form 5500-C because of the existing requirement that a Form 5500-C (which requires both beginning and ending year financial data) must be filed at least once every three years. The reduced reporting requirements of the proposed revisions to the Form 5500 Series compared to the current Form 5500-C, therefore, should not increase and may potentially reduce the overall recordkeeping burden for small plans.

Completion of the Form 5500-C/R requires a mixture of professional and clerical skills. It is assumed that this mixture will not change as a result of the revisions to the Form 5500 Series. The cost savings, therefore, should correspond to the savings in burden hours. For sponsors using third-party administrators (TPAs) to complete all or part of the Form 5500 Series, additional costs attributable to instruction reading and understanding the revisions of the Form 5500 Series are expected to be negligible. However, any savings in this area for plan sponsors are expected to be offset by additional costs charged by TPAs to modify automated system software to accommodate the proposed revisions to the Form 5500 Series. The elimination of the Form 5500-R may increase burdens for these small filers because under the proposal they will be required to furnish SARs on an annual basis and without the accommodations found in the existing regulations at § 2520.104b-10(b). The Department solicits comments from interested parties on this aspect of the proposal.

(6) No Federal rules have been identified that duplicate, overlap or conflict with the proposed rule.

(7) No significant alternatives to the proposed 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.

The Department invites interested persons to submit comments regarding its preliminary determination that the proposal will not have a significant economic impact on a substantial number of small entities. The Department also requests comments from small entities regarding what, if any, special problems they might encounter if the proposal were to be adopted, and what changes, if any, could be made to minimize those problems. To avoid duplication of comments, comments submitted in response to the September 3, 1997 Notice of Proposed Revision of Annual Information Return/Report (62 FR 46556) and the June 24, 1998 request for comments will be treated as comments on this Notice of Proposed Rulemaking.

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, in accord with the mandates of the Paperwork Reduction Act and the President's priorities. Therefore, this notice is "significant" and subject to OMB review under Executive Order 12866(3)(f)(4).

Under Part 1 of Title I 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 of Labor to prescribe by regulation simplified reporting for pension plans that cover fewer than 100 participants. Section 104(a)(3) authorizes that 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 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 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 is proposing to make 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 900,000 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. A revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act 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 submission. 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 Paperwork Reduction Act review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. As discussed in paragraph A (Background) of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. The final computer scannable version of the forms, which must be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments. The amendments proposed

in this Notice of Proposed Rulemaking are intended to make technical changes to the Department's reporting regulations, and conform them to requirements of the Form 5500 Series, as revised.

Because information reported to the Department is also subject to ERISA's disclosure provisions, the Department in this proposal 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.

Costs

The cost and burden associated with the annual reporting requirement for any given plan will vary according to a limited number of factors, including whether and to what extent underlying records are maintained electronically or manually, whether and to what extent the Form 5500 is reproduced electronically or completed manually, and whether and to what extent these activities are performed in-house by the plan sponsor or purchased from service providers. However, little information is available with respect to the actual distribution of plans within these ranges. Consideration of the potential cost impact of the proposed revisions to the Form 5500 Series results, therefore, in estimates which are based on a number of assumptions concerning the costs of automated systems and system modifications, the numbers and types of users of automated systems, and the numbers and types of users of the services of third-party administrators.

The Department believes that the revisions to the Form 5500 will generally impose the greatest additional cost on plan administrators whose systems for storing and producing Form 5500 data are most completely automated, and the least additional cost on those least automated. For this reason, a distinction is made here between "full-service automated systems" and "basic automated systems." A full-service automated system is considered to be a sophisticated system which stores and manipulates the data needed for completion of the form, and which also summarizes and prints the data in the Form 5500 format. A basic automated system generally stores financial data, flags the types of transactions required to be reported on the Form 5500, and facilitates completion of the form, but does not configure output in Form 5500 format.

Both types of systems are expected to require certain modifications in their data storage features, due to the proposed changes in the groupings of financial data on the form. However, while the output of basic systems may be expected to require some revision to facilitate efficient completion of the form, reconfiguration of the existing output of full-service systems to conform with the revised Form 5500 format is considered likely to require substantial system modifications.

For purposes of this discussion of potential costs, it has been assumed that the Form 5500 reproduction capability represents one-half of the cost of the complete system, and that basic automated systems sell for approximately one-half of the cost of full-service automated systems. Modification (in contrast to initial purchase) of the output capability of a full-service system is assumed to equal one-third of the cost of the original system. On this basis, the full-service system cost can be adjusted by a factor of .165 to arrive at the cost increase attributable to modifying output capability. Several other assumptions underlying the costs estimated here are specifically identified where applicable.

The Department believes that the primary purchasers of full-service automated systems are third-party administrators (TPAs) serving substantial numbers of clients, and banks and trust companies managing master trust investment accounts (MTIAs). Such full-service systems have been developed by only a small number of vendors. The known cost of one such system consists of an initial fee of \$11,000 and an additional annual fee of \$2,000. Given the stated assumptions concerning the costs for the output capability and the modification of output capability as percentages of original cost, the cost of system redesign passed along from vendors to TPA purchasers is estimated to amount to an initial fee of \$1,815 plus an increased annual fee of \$333. Assuming a ten-year redesign cycle, and ten-year depreciation of the initial fee increase, the annual increase would amount to \$182 plus the \$333 annual fee, or \$515.

This annual increase may be multiplied by the number of TPA purchasers which are assumed to be of sufficient size to warrant the purchase and modification of these systems to arrive at a total annual cost. Fifty-five TPAs with at least 50 client plans were identified for this purpose by tabulating the number of unique employer identification numbers for plan administrators among 1993 annual reports in which the plan administrator

was different from the plan sponsor. The resulting estimate of the annual cost of system modifications for TPAs using full-service systems is \$28,325.

Banks and trust companies providing master trust services to plans are also assumed to purchase or develop in-house automated systems to both complete Direct Filing Entity (DFE) reports filed with the Department and to provide plan financial data to plan sponsors filing Form 5500 reports. Data from 1993 Form 5500 filings indicate a total of 160 such banks and trust companies managing MTIAs for approximately 24,000 plans filing Form 5500 reports completed by the plan sponsor. Assuming the same \$515 annual cost increase for managers of MTIAs, their modification cost is estimated at \$82,400.

Users of basic automated systems are believed to include smaller TPAs and large plan sponsors that complete Form 5500 in-house. It is assumed that the TPAs and plan sponsors using these systems would either purchase redesigned software from vendors or incur direct costs to modify software developed in-house. Modification costs would likely vary, but are expected to be roughly equivalent to the cost to the Department of modifying the internal system which configures balance sheet and income statement data in Form 5500 format. This cost is estimated to be equal to 2.7% of the initial cost of the system.

Based on the known cost of a full-service automated system, and the

assumption that basic systems are available for one-half the cost of full-service systems, the basic system might be purchased for \$5,500 plus a \$1,000 annual fee. A 2.7% increase in the cost attributable to changes in the financial schedule would result in a fee increase of \$148.50 plus \$27 per year. Depreciation of the initial fee over a ten-year period would result in an annual cost of about \$42.

Because the number of plan sponsors which rely, either directly or indirectly, on a basic automated system is unknown, certain assumptions are made for the purpose of estimating a cost of modifying basic automated systems. It is assumed that two principal types of filers will either purchase such systems from vendors or pay an equivalent cost for modifying systems developed in-house: small TPAs completing Form 5500 in their clients' behalf, and sponsors of self-insured or partially insured, partially self-insured plans with at least 100 participants which complete the forms in-house. Small plan filers which complete the forms in-house and large fully-insured filers are excluded from this estimate because it is believed that these filers will not rely on automated systems.

The number of plans which have Form 5500 completed by a TPA is derived from the review of 1993 Form 5500 data where the plan administrator differs from the plan sponsor. The total count of such plans in 1993 was 28,900. Subtracting the 18,300 plans previously

considered as clients of large TPAs leaves 10,600 plans serviced by small TPAs. Assuming an average client base of 20 plans for these smaller TPAs results in an estimate of approximately 530 TPAs. Given the assumption of \$42 for the annual increase in costs, these TPAs would incur an estimated cost increase of \$22,180 for system modifications.

The number of 1993 plan filings which did not show a different plan sponsor and plan administrator, which have at least 100 participants, and which are not fully-insured was 45,500. Of these, 37,000 plans were sponsored by sponsors of single plans; 8,500 sponsored multiple plans, totaling 30,000 plans. It is assumed that sponsors of multiple plans require systems which handle multiple records, and that systems which do not require multiple records will be less costly to modify. The 8,500 sponsors are expected to incur a \$42 annual cost for modifying multiple-plan systems, for a total of \$357,000. The 37,000 plans which do not require multiple-record capability are expected to incur one-half of the annual cost of multiple-record system modification, or \$21 per plan, for a total of \$777,000.

As summarized below, the annual cost estimated on the basis of the stated assumptions to be incurred as a result of modification of automated systems to produce or complete Form 5500 is \$1.3 million.

ESTIMATED NUMBER OF FORM 5500 SERIES FILINGS COMPLETED WITH ASSISTANCE OF AUTOMATED SYSTEMS

	Number of plans	Annual per plan costs	Total annual costs	Ten-year cost per plan	Total ten-year costs
Large TPAs (full service systems)	18,300	\$1.55	\$28,325	\$15.50	\$283,250
MTIAs (full service systems)	24,000	3.43	82,400	34.30	823,200
Small TPAs (basic systems)	10,600	2.09	22,180	20.90	221,800
Large Plans Administered In-House—One Plan	37,000	21.00	777,000	210.00	7,770,000
Large Plans Administered In-House—Multiple Plans	30,000	11.90	357,000	119.00	3,570,000
Total	119,900	10.12	1,266,905	101.20	12,668,250

Further, it is estimated that other resources will be required in the initial year of implementation of the revised forms. As a result of the change in information required to be reported by plans with fewer than 100 participants, average time for small plans to complete the Department's data elements is assumed to increase from 51.4 minutes for existing Form 5500-C filers and 33.6 minutes for Form 5500-R filers (an annual average of 41.6 minutes over the existing three-year filing cycle for plans with fewer than 100 participants which are not otherwise exempt from filing

requirements) to 52.4 minutes for the revised form. This increase in the initial year is based on the assumption that filers will require additional time for reviewing instructions to the revised form. The time required for small plan filers to complete the Form 5500 is estimated to be 35.2 minutes in subsequent years.

Additional time will also be required in the year of implementation of the revised form for DFEs such as common/collective trusts, pooled separate accounts, master trusts, 103-12 investment entities, and group

insurance arrangements to complete the Form 5500 Series in the standardized format. Existing rules specify the types of information to be filed by DFEs or reported to plan sponsors, but do not require the use of a standard format for reporting purposes. It is estimated that DFEs will expend approximately 8,429 hours per year in preparing and filing plan and asset information in the standardized format and providing certifications to participating plans concerning whether or not they will file directly with the Department. Corresponding costs may be passed on

to plans which participate in a DFE in the form of increased fees.

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, 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 SEPs), or those eligible for limited reporting options (such as certain 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 one-page 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. The revised instructions will allow filers to go directly to the instructions which apply to them, and avoid those which do not apply.

Based on the elimination of certain information and reformatting of the Form 5500 Series, the burden of preparing and distributing the form is estimated to be reduced by between 12% and 13% per year over the ten-year life of the form. Assuming an hourly cost ranging from \$20 to \$25 per hour for preparation of the form, the burden hour reduction is expected to result in a reduction in filer costs which ranges from \$1.7 million to \$2.1 million per year over the life of the form.

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 and effectively use the data for enforcement and research purposes with respect to the over \$1 trillion in plan assets held by DFEs.

The revisions are also designed to support and facilitate the processing system currently in developmental stages to simplify and expedite the processing of the Form 5500 Series. This new system is planned to rely on electronic filing with automatic error detection, and optical scanning technology and optical character recognition to computerize the paper forms, resulting in reductions in government 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 an overall reduction in the number of pages on which the information will be submitted.

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 burden over the life of the forms while enhancing the ability to protect benefits with timely and accurate information.

Paperwork Reduction Act Statement

The Agencies, as part of their continuing efforts to reduce paperwork and respondent burden, invite the general public and Federal agencies to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data are provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents is properly assessed. The Agencies solicited comments on the information collection request (ICR) included in this proposed regulatory action as part of the proposed revision of the Form 5500 Series published in the **Federal Register** on September 3, 1997 (62 FR 46556). 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. The Agencies received public comments stating that, although acknowledging that the forms revisions will reduce plan administration costs, estimates of the time required to collect the information and prepare the forms and related schedules were low resulting in underestimated burden calculations. The Agencies are currently exploring approaches to developing a revised burden estimation methodology in an effort to respond to those concerns. 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. A new and revised Form 5500 was submitted to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act which was made available on PWBA's internet site. A Comment Request published in the **Federal Register** on June 24, 1998, 63 FR 34493, provided the public with a 30-day opportunity to submit comments to OMB on the new Form 5500 submission. Following OMB's review, OMB gave conditional Paperwork Reduction Act approval to the new Form 5500 on August 26, 1998. As discussed in paragraph A (Background) of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. The final computer scannable version of the forms, which will be required to be used for 1999 plan years, will be published in the **Federal Register** following the Agencies' evaluation of public comments. In order to avoid unnecessary duplication of public comments, the supplementary PRA 95 information published in the September 3, 1997 Notice of Proposed Forms Revisions and the June 24, 1998 Comment Request is incorporated herein by this reference in its entirety, and comments submitted in response to these **Federal Register** publications will be treated as comments on this Notice of Proposed Rulemaking. A copy of the ICR may be obtained by contacting the office listed under the heading "Addressee For PRA 95 Comments."

The Department has submitted a copy of the proposed information collection to the Office of Management and Budget (OMB) in accordance with 44 U.S.C. § 3507(d) of the PRA 95 for its review of its information collections. The Department is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments should be sent to the Office of Information and Regulatory Affairs, OMB, Room 10235, New Executive Office Building, Washington, D.C. 20503; Attention: Desk Officer for the Pension and Welfare Benefits Administration. Although comments may be submitted through February 8, 1999, OMB requests that comments be received within 30 days of publication of the Notice of Proposed Rulemaking to ensure their consideration.

Addressee for PRA 95 Comments: Written comments regarding only PRA 95 and the ICR should be sent to Gerald B. Lindrew, U.S. Department of Labor, PWBA/OPR, Room N-5647, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone 202-219-4784 (this is not a toll-free number). Written comments must be submitted on or before February 8, 1999, to be assured of consideration.

I. PRA 95 Background: The Department is proposing to amend its annual reporting regulations to conform them to the Agencies' revision of the Form 5500 Series in a effort to streamline and simplify this annual report.

II. PRA 95 Current Actions: The amendments contained in this document are necessary to conform the Department's annual reporting regulations to the new Form 5500 Series for which OMB gave conditional Paperwork Reduction Act approval on August 26, 1998. As described in paragraph A of this preamble, the approval is conditioned, in part, on the Agencies soliciting public comments on the computer scannable version of the new form after its development and making minor adjustments to the form. See the Notice of Proposed Forms Revisions published in the **Federal**

Register on September 3, 1997 (62 FR 46556), the Comment Request published in the **Federal Register** on June 24, 1998 (63 FR 34493) and PWBA's internet site for the new Form 5500 that was submitted to OMB for approval under the Paperwork Reduction Act.

As indicated in paragraphs C.3 and C.4 of this preamble, the proposed amendments would modify the reporting rules for plans investing in CCTs and PSAs, and add a new information collection item with a small additional burden to existing requirements for CCTs and PSAs. Under existing rules, CCTs and PSAs must provide certain information to each participating plan's administrator including (i) a copy of the annual statement of assets and liabilities for its fiscal year that ends with or within the plan year of such plan and (ii) the value of the plan's units of participation. This information must be certified as accurate and complete and must be provided by the CCT and PSA within 120 days after the close of the plan year for each participating plan. A participating plan is required to include with their annual report a copy of the CCT's or PSA's statement of assets and liabilities unless such CCT or PSA files it directly with the Department and certain other conditions are met. In such a case, the CCT or PSA must certify to the plan administrator that a copy of its statement of assets and liabilities has been filed with the Department. A PSA's and CCT's statement of assets and liabilities is not required to be reported in a uniform format or manner. In addition, under the existing rules a participating plan must report the current value of its interest in a CCT or PSA at the beginning and end of its plan year regardless of whether the CCT or PSA files directly with the Department.

Under the proposal, CCTs and PSAs which elect to file directly with the Department, like other DFEs, must use a standardized form. In the case of a CCT or PSA that intends to file as a DFE, the proposed amendments would require that such CCT or PSA notify its participating plans of its intention to do so. In the case of a CCT or PSA that does not file as a DFE, the proposed amendments would require that such CCT or PSA notify its participating plans of this fact and furnish the information needed about its assets (i.e., break out their interest in the CCT or PSA into general asset categories such as stocks, debt, real estate, etc.) so the participating plan can satisfy its own annual reporting obligations. These notifications must be made within the same time period for transmitting information already required under the

existing rules (i.e., 120 days after the close of the plan year for each participating plan).

The impact of these proposed changes with respect to CCTs and PSAs and plans which participate in these entities has been estimated and included in the total estimated burden for this ICR under PRA 95. The total additional burden imposed by standardization of reporting and modification of the certification requirement for CCTs and PSAs is estimated at 2,725 hours per year. This includes only a nominal adjustment for the change in the certification requirement. The Department believes that the certification will be based on a decision made once per year for each CCT or PSA. CCTs or PSAs that file as a DFE are under current rules required to certify essentially the same substantive information as would be required under the new DFE rules. The requirement to certify that the entity is filing as a DFE within 120 days after the end of the participating plans year-ends should be a brief statement that should not impose any measurable burden in addition to that resulting from the current requirements. In the case of CCTs and PSAs that do not file as a DFE, the entities under current rules already must certify various substantive information to their participating plans within 120 days after the plans' year-ends. Adding to the certification a brief statement that the entity is not filing as a DFE should not impose any measurable burden in addition to that resulting from the current requirements. In this regard, the Department anticipates that the requirement to certify information sufficient to enable the participating plans' to report beginning and end of year values for their interests in the underlying assets of such CCTs or PSAs should not be a burden inasmuch as plans participating in CCTs and PSAs already are required to report the current value of their units of participation in CCTs and PSAs as of the beginning and end of the plan year. The proposed rulemaking would also explicitly require an information collection item in §§ 2520.103-1(f), 2520.103-2(c), 2520.103-9(d) and 2520.103-12(f) for entities filing electronically by requiring that such entities maintain an original copy of the filing with all required signatures as part of the entity's records. The Department believes that no additional burden associated with such record maintenance will arise inasmuch as plans and direct filers routinely maintain copies of all such filings to satisfy other statutory obligations.

Finally, the proposed amendments to § 2520.104b-10 may add a burden that is associated with the elimination of the Form 5500-R filing. Specifically, such plans will be required to provide SARs on an annual basis and may not use the alternative method of compliance currently provided in § 2520.104b-10(b).

Type of Review: Revision of a currently approved collection.

Agency: Pension and Welfare Benefits Administration.

OMB Number: Currently approved under OMB No. 1210-0016; A new number will be assigned to the revised Form 5500 and schedules which will be published on the form and schedules used by DOL, IRS and PBGC.

Title: Form 5500 Series.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Form Number: DOL/IRS/PBGC Form 5500 and Schedules.

Total Respondents: 801,934.

Total Responses: 801,934.

Frequency of Response: Annually.

Estimated Time per Response,

Estimated Burden Hours, Total Annual Burden: PWBA and IRS burden estimates are based on different estimation methodologies resulting in total burden estimate ranges from 1.71 million burden hours (using the PWBA methodology) to 8.46 million burden hours (using the IRS methodology) for preparing the Form 5500 Series report and sending it to the government. See the Notice of Proposed Forms Revisions published in the **Federal Register** on September 3, 1997 (62 FR 46556) for detailed information on the burden estimates.

Small Business Regulatory Enforcement Fairness Act

This notice of proposed rulemaking, when finalized, will be subject to the provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et. seq.*) and will be transmitted to Congress and the Comptroller General for review.

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 notice of proposed rulemaking, if finalized, would 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.

Statutory Authority

This regulation is proposed pursuant to the authority in sections 101, 103,

104, 109, 110, 111, 504 and 505 of ERISA 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.

For the reasons set out in the preamble, Part 2520 of Chapter XXV of Title 29 of the Code of Federal Regulations is proposed to be 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).

2. Section 2520.103-1 is amended by revising paragraphs (b) introductory text, (b)(1), the first sentence of (b)(2)(i), paragraphs, (b)(4), (c), (d) and the first sentence of paragraph (e) 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 (Direct Filing Entity/Participating Plan

Information), Schedule G (Financial Transactions Schedule), 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 the 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 (Direct Filing Entity/Participating Plan Information), Schedule I (Financial Information—Small Plan), and Schedule R (Retirement Plan Information).

(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 it 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. * * *

3. Section 2520.103-1 is further amended by adding a new paragraph (f) as follows:

§ 2520.103-1 [Amended]

* * * * *

(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.

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

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

* * * * *

(b) * * *

(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 (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), and the other financial schedules described in § 2520.103-10.

(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. * * *

* * * * *

(b)(4) In the case of a Form 5500 annual report filed under this section for a group insurance arrangement some or all of the assets of which are held in a pooled separate account maintained by an insurance carrier, or a common or collective trust maintained by a bank, 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 the 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" and "trust" shall be, respectively, used in place of the terms "plan" and "plan administrator."

* * * * *

5. Section 2520.103-2 is further amended by adding a new paragraph (c) as follows:

§ 2520.103-2 [Amended]

* * * * *

(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 maintains an original copy, with all required signatures, as part of the trust's records.

6. Section 2520.103-3 is amended by revising paragraphs (a) and (c) 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), and 110 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 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) 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 (Direct Filing Entity/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) 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 (Direct Filing Entity/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) 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), and 110 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 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) 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 (Direct Filing Entity/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) 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 (Direct Filing Entity/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 paragraph (c)(2)(iii) as (c)(2)(iv), redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(iii), revising paragraphs (c)(1)(ii) and (c)(2)(i) and adding new paragraphs (c)(1)(iii), and (c)(2)(ii) 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 the Form 5500 report pursuant to § 2520.103-9 for a 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 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 date upon which such plan's annual report is required to be filed in accordance with §§ 2520.104a-5 or 2520.104a-6, 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)(A) 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 the Form 5500 report pursuant to § 2520.103-9, for a 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 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)(A) of the Act and § 2520.104a-5 or § 2520.104a-6.

* * * * *

(2) * * *

(i) In a common or collective trust that files the Form 5500 report pursuant to § 2520.103-9, for a 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, any other identifying number assigned by the bank, trust company, or other institution to the common or collective trust,

(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 date upon which the annual report for such plan is required to be filed in accordance with §§ 2520.104a-5 or 2520.104a-6, 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)(A) of the Act and §§ 2520.104a-5 or 2520.104a-6.

(ii) In a common or collective trust that does not file the Form 5500 "Annual Return/Report of Employee Benefit Plan", pursuant to § 2520.103-9, for a 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 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 bank, trust company or similar institution to the common or collective trust.

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

* * * * *

9. Section 2520.103-6 is amended by revising paragraphs (a) and (b)(1)(ii), and adding paragraph (f) 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) With respect to schedules of reportable transactions for the initial plan year of a plan, the term "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 only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

10. Section 2520.103-9 is revised 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 EIN of the plan sponsor as it will be indicated 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 (Direct Filing Entity/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 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, issuer or similar party;

(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 (e.g., fully amortized, partly amortized with a final lump sum payment).

(ii) 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) 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.* (1) There is no specific format requirement for the schedules described in paragraphs (b)(1), (b)(2) or (b)(6) of this section provided such schedules are filed with the required information using the same size paper as the Form 5500.

(2) Except as provided in paragraph (c)(1) of this section, such paragraph shall not apply to the Form 5500 and the statements and schedules required to be filed with such form.

12. Section 2520.103-11 is amended by revising paragraph (a) and adding paragraphs (d) 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, 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 only to the extent that such individual, in fact, affirmatively authorized the investment of the asset allocated to his or her account.

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

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

(a) * * * 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 entity described in paragraph (c) of this section shall file, in

accordance with the instructions for the form:

(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 (Direct Filing Entity/Participating Plan Information), Schedule G (Financial Transactions Schedule), Schedule H (Financial Information), and the financial 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).

(c) * * *

* * * * *

(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) as follows.

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

* * * * *

(b) * * *

(2) * * *

(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 and 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. 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, and also holds the insurance contracts. 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 through an independent insurance brokerage firm. 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), 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), 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.

15. Section 2520.104-41 is amended by revising paragraphs (b) and (c) 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 required to be filed pursuant to section 104(a)(1)(A) of the Act and § 2520.104a-5.

(c) *Contents.* The administrator of an employee pension or welfare benefit plan described in paragraph (b) of this section 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, including Schedule A (Insurance information), Schedule B (Actuarial Information), Schedule D (Direct Filing Entity/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) 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" and "trust" shall be used in place of the terms "plan" or "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), substituting a semi-colon for the period at the end of paragraph (b)(2), adding paragraph (b)(3), and revising paragraph (c)(1) as follows:

§ 2520.104-44 Limited exemption and alternative method of compliance for annual reporting by unfunded plans and by 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 established under Code section 403(b)(7) as the sole funding vehicle for providing pension benefits.

(c) * * *

(1) Completing certain items of the annual report as prescribed by 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) 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 as follows.

a. In the first sentence of paragraph (a), the phrase "paragraphs (b) and (g)" is revised to read "paragraph (g)".

b. Remove and reserve paragraph (b).

20. Paragraph (c) introductory text and the first sentence of paragraph (f) of section 2520.104b-10 are revised 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.

* * * * *

21. 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), the list under the heading "Your Rights to Additional Information" (after the introductory text but before the language "To obtain a copy of the full annual report * * *") is revised 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;
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), the list under the heading "Your Rights to Additional Information" (after the introductory text but before the language "To obtain a copy of the full annual report * * *") is revised 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;
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 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.

Signed at Washington, DC, this 4th day of December, 1998.

Meredith Miller,

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

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