

§ 2520.104-24

29 CFR Ch. XXV (7-1-01 Edition)

(2) Under section 110 of the Act, the Secretary is authorized to prescribe an alternative method for satisfying any requirement of part 1 of title I of the Act with respect to any pension plans, or class of pension plans, subject to such requirement.

(b) *Filing obligation.* Under the authority of section 110 of the Act, an alternative form of compliance with the reporting and disclosure requirements of part 1 of the Act is provided for certain pension plans for a select group of management or highly compensated employees. The administrator of a pension plan described in paragraph (d) shall be deemed to satisfy the reporting and disclosure provisions of part 1 of title I of the Act by—

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

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

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

Labor, 200 Constitution Avenue NW., Washington, DC.

(d) *Application.* The alternative form of compliance described in paragraph (b) of this section is available only to employee pension benefit plans—

(1) Which are maintained by an employer primarily for the purpose of providing deferred compensation for a select group of management or highly compensated employees, and

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

[40 FR 34533, Aug. 15, 1975, as amended at 54 FR 8629, Mar. 1, 1989]

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

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

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

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

(c) *Application.* This exemption is available only to employee welfare benefit plans:

(1) Which are maintained by an employer primarily for the purpose of providing benefits for a select group of management or highly compensated employees, and

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

[40 FR 34533, Aug. 15, 1975]

§ 2520.104-25 Exemption from reporting and disclosure for day care centers.

Under the authority of section 104(a)(3) of the Act, day care centers are exempted from the reporting and disclosure provisions of part 1 of title I of the Act, except for providing plan documents to the Secretary upon request as required under section 104(a)(1) of the Act.

[40 FR 34533, Aug. 15, 1975]

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

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

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

(i) Filing is made under the Labor-Management Reporting and Disclosure Act (LMRDA) and regulations thereunder, of the Report Form LM-1 or LM-1A, together with a copy of the em-

ployee organization constitution or by-laws in which the plan is described, and

(ii) Filing is made of any document furnished to participants and beneficiaries, in accordance with paragraph (a)(3) of this section.

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

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

(ii) Notwithstanding paragraph (a)(3)(i) of this section, if any provisions of such documents indicate that a certain portion of members' dues or a certain portion of the employee organization's assets will be used only for the payment of benefits, although such portion of dues or assets may legally be used for general employee organization purposes, or are subject to the claims of general creditors of the employee organization, such documents may nevertheless be used as the summary plan description; *Provided, That:*

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

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

(b) *Application.* This exemption is available only to welfare benefit plans maintained by an employee organization, as that term is defined in section