

§ 2520.103-6

29 CFR Ch. XXV (7-1-05 Edition)

and is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a-5.

(iv) In a custodial account, upon request of the plan administrator, such information as is contained within the ordinary business records of the bank, trust company, or similar institution and is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a-5 or § 2520.104a-6.

(3) In the case of a plan sponsor, a listing of all transactions directly or indirectly involving plan assets engaged in by the plan sponsor and such information as is needed by the plan administrator to comply with the requirements of section 104(a)(1) of the Act and § 2520.104a-5 or § 2520.104a-6.

(d) *Certification.* (1) An insurance carrier or other organization, a bank, trust company, or similar institution, or plan sponsor, as described in paragraph (b) of this section, shall certify to the accuracy and completeness of the information described in paragraph (c) of this section by a written declaration which is signed by a person authorized to represent the insurance carrier, bank, or plan sponsor. Such certification will serve as a written assurance of the truth of the facts stated therein.

(2) *Example of Certification.* The XYZ Bank (Insurance Carrier) hereby certifies that the foregoing statement furnished pursuant to 29 CFR 2520.103-5(c) is complete and accurate.

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

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

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

(b) *Definitions.* (1)(i) Except as provided in paragraphs (c)(2) and (d)(1)(vi) of this section (relating to assets acquired or disposed of during the plan year), “current value” shall mean the current value, as defined in section 3(26) of the Act, of plan assets as of the beginning of the plan year, or the end of the previous plan year.

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

(2)(i) A “transaction with respect to securities” is any purchase, sale, or exchange of securities. A transaction with respect to securities for purposes of this section occurs on either the trade date or settlement date of a purchase, sale, or exchange of securities; either the trade date or settlement date must be used consistently during the plan year for the purposes of this section. For the purposes of this section, except as provided in paragraph (b)(2)(ii) of this section, “securities” includes a unit of participation in a common or collective trust or a pooled separate account.

(ii) Solely for purposes of paragraph (c)(1)(iv) of this section, the term “securities”, as it applies to any transaction involving a bank or insurance company regulated by a Federal or State agency, an investment company registered under the Investment Company Act of 1940, or a broker-dealer registered under the Securities Exchange Act of 1934, shall not include:

(A) Debt obligations of the United States or any United States agency with a maturity of not more than one year;

(B) Debt obligations of the United States or any United States agency with a maturity of more than one year if purchased or sold under a repurchase agreement having a term of less than 91 days;

(C) Interests issued by a company registered under the Investment Company Act of 1940;

(D) Bank certificates of deposit with a maturity of not more than one year;

(E) Commercial paper with a maturity of not more than nine months if it is ranked in the highest rating category for commercial paper by at least two nationally recognized statistical rating services and is issued by a company required to file reports under section 13 of the Securities Exchange Act of 1934;

(F) Participations in a bank common or collective trust;

(G) Participations in an insurance company pooled separate account;

(3)(i) Except as provided by paragraph (b)(3)(ii) of this section, a transaction is "with or in conjunction with a person" for purposes of this section if that person benefits from, executes, facilitates, participates, promotes, or solicits a transaction or part of a transaction involving plan assets.

(ii) Solely for the purposes of paragraph (c)(1)(iv) of this section, a transaction shall not be considered "with or in conjunction with a person" if:

(A) That person is a broker-dealer registered under the Securities Exchange Act of 1934;

(B) The transaction involves the purchase or sale of securities listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934 or quoted on NASDAQ; and

(C) The broker-dealer does not purchase or sell securities involved in the transaction for its own account or the account of an affiliated person.

(c) *Application.* (1) Except as provided in paragraph (c)(4) of this section, this provision applies to—

(i) A transaction within the plan year, with respect to any plan asset, involving an amount in excess of 3 percent of the current value of plan assets;

(ii) Any series of transactions (other than transactions with respect to securities) within the plan year with or in conjunction with the same person which, when aggregated, regardless of the category of asset and the gain or loss on any transaction, involves an amount in excess of 3 percent of the current value of plan assets;

(iii) Any transaction within the plan year involving securities of the same issue if within the plan year any series

of transactions with respect to such securities, when aggregated, involves an amount in excess of 3 percent of the current value of plan assets; and

(iv) Any transaction within the plan year with respect to securities with or in conjunction with a person if any prior or subsequent single transaction within the plan year with such person with respect to securities exceeds 3 percent of the current value of plan assets.

(2) For purposes of determining whether any 3 percent transactions occur, the "current value" of an asset acquired or disposed of during the plan year is the current value, as defined in section 3(26) of the Act, at the time of acquisition or disposition of such asset.

(3) Plans whose assets are held in whole or in part in a common or collective trust or a pooled separate account, as provided in §§ 2520.103-3 and 2520.103-4, and which satisfy the requirements of those sections, are not required to prepare schedules of reportable transactions with respect to the individual transactions of the common or collective trust or pooled separate account.

(4) For plan years beginning on or after January 1, 1988, 5 percent shall be substituted for 3 percent in paragraphs (c)(1) and (2) of this section for purposes of determining whether a transaction or series of transactions constitutes a reportable transaction under this section.

(d) *Contents.* (1) The schedule of transactions shall include the following information as to each transaction or series of transactions:

(i) The name of each party, except that in the case of a transaction or series of transactions involving a purchase or sale of a security on the market, the schedule need not include the person from whom it was purchased or to whom it was sold. A purchase or sale on the market is a purchase or sale of a security through a registered broker-dealer acting as a broker under the Securities Exchange Act of 1934;

(ii) A brief description of each asset;

(iii) The purchase or selling price in the case of a purchase or sale, the rental in the case of a lease, and the amount of principal, interest rate, payment schedule (e.g., fully amortized, partly amortized with balloon) and maturity date in the case of a loan;

(iv) Expenses incurred, including, but not limited to, any fees or commissions;

(v) The cost of any asset;

(vi) The current value of any asset acquired or disposed of at the time of acquisition or disposition; and

(vii) The net gain or loss.

(2) The schedule of transactions with respect to a series of transactions described in paragraph (c)(1)(iii) may include the following information for each issue in lieu of the information prescribed in paragraphs (d)(1)(i) through (vii):

(i) The total number of purchases of such securities made by the plan within the plan year;

(ii) The total number of sales of such securities made by the plan within the plan year;

(iii) The total dollar value of such purchases;

(iv) The total dollar value of such sales;

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

(e) *Examples.* These examples are effective for reporting for plan years beginning on or after January 1, 1988.

(1) At the beginning of the plan year, XYZ plan has 10 percent of the current value of its plan assets invested in ABC common stock. Halfway through the plan year, XYZ purchases ABC common stock in a single transaction in an amount equal to 6 percent of the current value of plan assets. At about this time, XYZ plan also purchases a commercial development property in an amount equal to 8 percent of the current value of plan assets. Under paragraph (c)(1)(i) of this section, the 6 percent stock transaction is a reportable transaction for the plan year because it exceeds 5 percent of the current value of plan assets. The 8 percent land transaction is also reportable under paragraph (c)(1)(i) of this section because it exceeds 5 percent of the current value of plan assets.

(2) During the plan year, AAA plan purchases a commercial lot from ZZZ corporation at a cost equal to 2 percent of the current value of the plan assets. Two months later, AAA plan loans ZZZ corporation an amount of money equal to 3.5 percent of the current value of plan assets. Under the provisions of

paragraph (c)(1)(ii) of this section, the plan has engaged in a reportable series of transactions with or in conjunction with the same person, ZZZ corporation, which when aggregated involves 5.5 percent of plan assets.

(3) During the plan year NMN plan sells to OPO corporation a commercial property that represents 3.5 percent of the current value of plan assets. OPO simultaneously executes a note and mortgage on the purchased property to NMN which represents 3 percent of the current value of plan assets. Under the provisions of paragraph (c)(1)(ii) of this section, NMN has engaged in a reportable series of transactions with or in conjunction with the same person, OPO corporation, consisting of a simultaneous sale of property and a loan, which, when aggregated, involves 6.5 percent of the current value of plan assets.

(4) At the beginning of the plan year, ABC plan has 10 percent of the current value of plan assets invested equally in a combination of XYZ Corporation common stock and XYZ preferred stock. One month into the plan year, ABC sells some of its XYZ common stock in an amount equal to 2 percent of the current value of plan assets.

(i) Six weeks later the plan sells XYZ preferred stock in an amount equal to 4 percent of the current value of plan assets. A reportable series of transactions has not occurred because only transactions involving securities of the same issue are to be aggregated under paragraph (c)(1)(iii) of this section.

(ii) Two weeks later when the ABC plan purchases XYZ common stock in an amount equal to 3.5 percent of the current value of plan assets, a reportable series of transactions under paragraph (c)(1)(iii) of this section has occurred. The sale of XYZ common stock worth 2 percent of plan assets and the purchase of XYZ common stock worth 3.5 percent of plan assets aggregate to exceed 5 percent of the total value of plan assets.

(5) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries in an amount equal to 6 percent of plan assets. The common stock of Able Industries is not listed on any national securities exchange or quoted on

NASDAQ. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases short term debt obligations of Charley Company through broker-dealer Y in the amount of 0.2 percent of plan assets. This purchase is also a reportable transaction under the provisions of paragraph (c)(1)(iv) of this section.

(6) At the beginning of the plan year, Plan X purchases from Bank B certificates of deposit having a 180 day maturity in an amount equal to 6 percent of plan assets. Bank B is a national bank regulated by the Comptroller of the Currency. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through Bank B 91-day Treasury bills in the amount of 0.2 percent of plan assets. This purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because the purchase of the Treasury bills as well as the purchase of the certificates of deposit are not considered to involve a security under the definition of "securities" in paragraph (b)(2)(ii) of this section.

(7) At the beginning of the plan year, Plan X purchases through broker-dealer Y common stock of Able Industries, a New York Stock Exchange listed security, in an amount equal to 6 percent of plan assets. This purchase is a reportable transaction under paragraph (c)(1)(i) of this section. Three months later, Plan X purchases through broker-dealer Y, acting as agent, common stock of Baker Corporation, also a New York Stock Exchange listed security, in an amount equal to 0.2 percent of plan assets. This latter purchase is not a reportable transaction under paragraph (c)(1)(iv) of this section because it is not a transaction "with or in conjunction with a person" pursuant to paragraph (b)(3)(ii) of this section.

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

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

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**§ 2520.103-8 Limitation on scope of accountant's examination.**

(a) *General.* Under the authority of section 103(a)(3)(C) of the Act, the examination and report of an independent qualified public accountant need not extend to any statement or information prepared and certified by a bank or similar institution or insurance carrier. A plan, trust or other entity which meets the requirements of paragraph (b) of this section is not required to have covered by the accountant's examination or report any of the information described in paragraph (c) of this section.

(b) *Application.* This section applies to any plan, trust or other entity some or all of the assets of which are held by a bank or similar institution or insurance carrier which is regulated and supervised and subject to periodic examination by a State or Federal agency.

(c) *Excluded information.* Any statements or information certified to by a bank or similar institution or insurance carrier described in paragraph (b) of this section, provided that the statements or information regarding assets so held are prepared and certified to by the bank or insurance carrier in accordance with § 2520.103-5.

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

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