

employees or members, provided that any plan assets held by such an insurance company are held solely in the general account of such company or organization, contributions by participants are forwarded by the employer or employee organization within three months of receipt and, in the case of a plan that provides for the return of refunds to contributing participants, such refunds are returned to them within three months of receipt by the employer or employee organization, or

(iii) Partly in the manner specified in paragraph (b)(1)(i) of this section and partly in the manner specified in paragraph (b)(1)(ii) of this section;

(2) A pension benefit plan the benefits of which are provided exclusively through allocated insurance contracts or policies which are issued by, and pursuant to the specific terms of such contracts or policies benefit payments are fully guaranteed by an insurance company or similar organization which is qualified to do business in any State, and the premiums for which are paid directly by the employer or employee organization from its general assets or partly from contributions by its employees or members: *Provided*, That contributions by participants are forwarded by the employer or employee organization to the insurance company or organization within three months of receipt and, in the case of a plan that provides for the return of refunds to contributing participants, such refunds are returned to them within three months of receipt by the employer or employee organization; and

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

(c) *Contents*. An employee benefit plan described in paragraph (b) of this section is exempt from complying with the following annual reporting requirements:

(1) Completing certain items of the annual report relating to financial information and transactions entered

into by the plan as described in the instructions to the Form 5500 "Annual Return/Report of Employee Benefit Plan" and accompanying schedules;

(2) Engaging an independent qualified public accountant pursuant to section 103(a)(3)(A) of the Act and § 2520.103-1(b) to conduct an examination of the financial statements and schedules of the plan; and

(3) Including in the annual report a report of an independent qualified public accountant concerning the financial statements and schedules required to be a part of the annual report pursuant to section 103(b) of the Act and § 2520.103-1(b).

(d) *Limitation*. This section does not exempt any plan from filing an annual report form with the Secretary in accordance with section 104(a)(1) of the Act and § 2520.104a-5.

(e) *Example*. A welfare plan which is funded entirely with insurance contracts and which meets all the requirements of exemption under § 2520.104-20 except that it covers 100 or more participants at the beginning of the plan year is not exempt from the annual reporting requirements under § 2520.104-20, but is exempt from certain reporting requirements under § 2520.104-44. Under the latter section, such a welfare plan should file Form 5500, including Schedule A "Insurance Information." However, the plan is not required to engage an independent qualified public accountant and need not complete certain items on form 5500.

[43 FR 10150, Mar. 10, 1978, as amended at 45 FR 51446, Aug. 1, 1980; 46 FR 5884, Jan. 21, 1981; 65 FR 21085, Apr. 19, 2000; 67 FR 777, Jan. 7, 2002]

§ 2520.104-45 [Reserved]

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

(a) *General*. (1) Under the authority of section 103(a)(3)(A) of the Act, the Secretary may waive the requirements of section 103(a)(3)(A) in the case of a plan for which simplified annual reporting has been prescribed in accordance with section 104(a)(2) of the Act.

(2) Under the authority of section 104(a)(3) of the Act the Secretary may

exempt any employee welfare benefit plan from certain annual reporting requirements.

(b) *Application.* (1)(i) The administrator of an employee pension benefit plan for which simplified annual reporting has been prescribed in accordance with section 104(a)(2)(A) of the Act and § 2520.104-41 is not required to comply with the annual reporting requirements described in paragraph (c) of this section, provided that with respect to each plan year for which the waiver is claimed—

(A)(1) At least 95 percent of the assets of the plan constitute qualifying plan assets within the meaning of paragraph (b)(1)(ii) of this section, or

(2) Any person who handles assets of the plan that do not constitute qualifying plan assets is bonded in accordance with the requirements of section 412 of the Act and the regulations issued thereunder, except that the amount of the bond shall not be less than the value of such assets;

(B) The summary annual report, described in § 2520.104b-10, includes, in addition to any other required information:

(1) Except for qualifying plan assets described in paragraph (b)(1)(ii)(A), (B) and (F) of this section, the name of each regulated financial institution holding (or issuing) qualifying plan assets and the amount of such assets reported by the institution as of the end of the plan year;

(2) The name of the surety company issuing the bond, if the plan has more than 5% of its assets in non-qualifying plan assets;

(3) A notice indicating that participants and beneficiaries may, upon request and without charge, examine, or receive copies of, evidence of the required bond and statements received from the regulated financial institutions describing the qualifying plan assets; and

(4) A notice stating that participants and beneficiaries should contact the Regional Office of the U.S. Department of Labor's Employee Benefits Security Administration if they are unable to examine or obtain copies of the regulated financial institution statements or evidence of the required bond, if applicable; and

(C) in response to a request from any participant or beneficiary, the administrator, without charge to the participant or beneficiary, makes available for examination, or upon request furnishes copies of, each regulated financial institution statement and evidence of any bond required by paragraph (b)(1)(i)(A)(2).

(ii) For purposes of paragraph (b)(1), the term "qualifying plan assets" means:

(A) Qualifying employer securities, as defined in section 407(d)(5) of the Act and the regulations issued thereunder;

(B) Any loan meeting the requirements of section 408(b)(1) of the Act and the regulations issued thereunder;

(C) Any assets held by any of the following institutions:

(1) A bank or similar financial institution as defined in § 2550.408b-4(c);

(2) An insurance company qualified to do business under the laws of a state;

(3) An organization registered as a broker-dealer under the Securities Exchange Act of 1934; or

(4) Any other organization authorized to act as a trustee for individual retirement accounts under section 408 of the Internal Revenue Code.

(D) Shares issued by an investment company registered under the Investment Company Act of 1940;

(E) Investment and annuity contracts issued by any insurance company qualified to do business under the laws of a state; and,

(F) In the case of an individual account plan, any assets in the individual account of a participant or beneficiary over which the participant or beneficiary has the opportunity to exercise control and with respect to which the participant or beneficiary is furnished, at least annually, a statement from a regulated financial institution referred to in paragraphs (b)(1)(ii)(C), (D) or (E) of this section describing the assets held (or issued) by such institution and the amount of such assets.

(iii)(A) For purposes of this paragraph (b)(1), the determination of the percentage of all plan assets consisting of qualifying plan assets with respect to a given plan year shall be made in the same manner as the amount of the

bond is determined pursuant to §§ 2580.412-11, 2580.412-14, and 2580.412-15.

(B) *Examples.* Plan A, which reports on a calendar year basis, has total assets of \$600,000 as of the end of the 1999 plan year. Plan A's assets, as of the end of year, include: investments in various bank, insurance company and mutual fund products of \$520,000; investments in qualifying employer securities of \$40,000; participant loans, meeting the requirements of ERISA section 408(b)(1), totaling \$20,000; and a \$20,000 investment in a real estate limited partnership. Because the only asset of the plan that does not constitute a "qualifying plan asset" is the \$20,000 real estate investment and that investment represents less than 5% of the plan's total assets, no bond would be required under the proposal as a condition for the waiver for the 2000 plan year. By contrast, Plan B also has total assets of \$600,000 as of the end of the 1999 plan year, of which \$558,000 constitutes "qualifying plan assets" and \$42,000 constitutes non-qualifying plan assets. Because 7%—more than 5%—of Plan B's assets do not constitute "qualifying plan assets," Plan B, as a condition to electing the waiver for the 2000 plan year, must ensure that it has a fidelity bond in an amount equal to at least \$42,000 covering persons handling non-qualifying plan assets. Inasmuch as compliance with section 412 requires the amount of bonds to be not less than 10% of the amount of all the plan's funds or other property handled, the bond acquired for section 412 purposes may be adequate to cover the non-qualifying plan assets without an increase (i.e., if the amount of the bond determined to be needed for the relevant persons for section 412 purposes is at least \$42,000). As demonstrated by the foregoing example, where a plan has more than 5% of its assets in non-qualifying plan assets, the bond required by the proposal is for the total amount of the non-qualifying plan assets, not just the amount in excess of 5%.

(2) The administrator of an employee welfare benefit plan that covers fewer than 100 participants at the beginning of the plan year is not required to comply with annual reporting require-

ments described in paragraph (c) of this section.

(c) *Waiver.* The administrator of a plan described in paragraph (b)(1) or (2) of this section is not required to:

(1) Engage an independent qualified public accountant to conduct an examination of the financial statements of the plan;

(2) Include within the annual report the financial statements and schedules prescribed in section 103(b) of the Act and §§ 2520.103-1, 2520.103-2, and 2520.103-10; and

(3) Include within the annual report a report of an independent qualified public accountant as prescribed in section 103(a)(3)(A) of the Act and § 2520.103-1.

(d) *Limitations.* (1) The waiver described in this section does not affect the obligation of a plan described in paragraph (b) (1) or (2) of this section to file a Form 5500 "Annual Return/Report of Employee Benefit Plan," including any required schedules or statements prescribed by the instructions to the form. See § 2520.104-41.

(2) For purposes of this section, an employee pension benefit plan for which simplified annual reporting has been prescribed includes an employee pension benefit plan which elects to file a Form 5500 as a small plan pursuant to § 2520.103-1(d) with respect to the plan year for which the waiver is claimed. See § 2520.104-41.

(3) For purposes of this section, an employee welfare benefit plan that covers fewer than 100 participants at the beginning of the plan year includes an employee welfare benefit plan which elects to file a Form 5500 as a small plan pursuant to § 2520.103-1(d) with respect to the plan year for which the waiver is claimed. See § 2520.104-41.

(4) A plan that elects to file a Form 5500 as a large plan pursuant to § 2520.103-1(d) may not claim a waiver under this section.

[43 FR 10151, Mar. 10, 1978, as amended at 43 FR 14010, Apr. 4, 1978; 45 FR 51447, Aug. 1, 1980; 54 FR 8629, Mar. 1, 1989; 65 FR 21085, Apr. 19, 2000; 65 FR 62973, Oct. 19, 2000]