

of the plan year is not required to comply with annual reporting requirements 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]

§ 2520.104-47 Limited exemption and alternative method of compliance for filing of insurance company financial reports.

An administrator of an employee benefit plan to which section 103(e)(2) of the Act applies shall be deemed in compliance with the requirement to include with its annual report a copy of the financial report of the insurance company, insurance service or similar organization, provided that the administrator files a copy of such report within 45 days of receipt of a written request for such report by the Secretary of Labor.

[45 FR 14034, Mar. 4, 1980]

§ 2520.104-48 Alternative method of compliance for model simplified employee pensions—IRS Form 5305-SEP.

Under the authority of section 110 of the Act the provisions of this section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in part 1 of title I of the Employee Retirement Income Security Act of 1974 in the case of a simplified employee pension (SEP) described in section 408(k) of the Internal Revenue Code of 1954 as amended (the Code) that is created by use without modification of Internal Revenue Service (IRS) Form 5305-SEP.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter), the administrator of the SEP (generally the employer establishing and maintaining the SEP) shall furnish the employee with a copy of the completed and unmodified IRS Form 5305-SEP used to create the SEP, including (1) the completed Contribution Agreement, (2) the General Information and Guidelines, and (3) the Questions and Answers.

(b) Following the end of each calendar year the administrator of the SEP shall notify each participant in the SEP in writing of any employer contributions made under the Contribution Agreement to the participant's individual retirement account or individual retirement annuity (IRA) for that year.

(c) If the employer establishing and maintaining the SEP selects, recommends, or in any other way influences employees to choose a particular IRA or type of IRA into which contributions under the SEP will be made, and if that IRA is subject to restrictions on a participant's ability to withdraw funds (other than restrictions imposed by the Code that apply to all IRAs), the administrator of the SEP shall give to each employee, in writing, within 90 days of the adoption of this regulation or at the time such employee becomes eligible to participate in the SEP, whichever is later, a clear explanation of those restrictions and a statement to the effect that other IRAs, into which rollovers or employee contributions may be made, may not be subject to such restrictions.

[45 FR 24869, Apr. 11, 1980]

§ 2520.104-49 Alternative method of compliance for certain simplified employee pensions.

Under the authority of section 110 of the Act, the provisions of this section are prescribed as an alternative method of compliance with the reporting and disclosure requirements set forth in part 1 of title I of the Act for a simplified employee pension (SEP) described in section 408(k) of the Internal Revenue Code of 1954 as amended, except for:

A SEP that is created by proper use of Internal Revenue Service Form 5305-SEP, or; a SEP in connection with which the employer who establishes or maintains the SEP selects, recommends or influences its employees to choose the IRAs into which employer contributions will be made and those IRAs are subject to provisions that prohibit withdrawal of funds by participants for any period of time.

(a) At the time an employee becomes eligible to participate in the SEP (whether at the creation of the SEP or thereafter) or up to 90 days after the effective date of this regulation, whichever is later, the administrator of the SEP (generally the employer establishing or maintaining the SEP) shall furnish the employee in writing with:

(1) Specific information concerning the SEP, including:

(i) The requirements for employee participation in the SEP,

(ii) The formula to be used to allocate employer contributions made under the SEP to each participant's individual retirement account or annuity (IRA),

(iii) The name or title of the individual who is designated by the employer to provide additional information to participants concerning the SEP, and

(iv) If the employer who establishes or maintains the SEP selects, recommends or substantially influences its employees to choose the IRAs into which employer contributions under the SEP will be made, a clear explanation of the terms of those IRAs, such as the rate(s) of return and any restrictions on a participant's ability to roll over or withdraw funds from the IRAs, including restrictions that allow rollovers or withdrawals but reduce earnings of the IRAs or impose other penalties.

(2) General information concerning SEPs and IRAs, including a clear explanation of:

(i) What a SEP is and how it operates,

(ii) The statutory provisions prohibiting discrimination in favor of highly compensated employees,

(iii) A participant's right to receive contributions under a SEP and the allowable sources of contributions to a SEP-related IRA (SEP-IRA),

(iv) The statutory limits on contributions to SEP-IRAs,

(v) The consequences of excess contributions to a SEP-IRA and how to avoid excess contributions,

(vi) A participant's rights with respect to contributions made under a SEP to his or her IRA(s),

(vii) How a participant must treat contributions to a SEP-IRA for tax purposes,

(viii) The statutory provisions concerning withdrawal of funds from a SEP-IRA and the consequences of a premature withdrawal, and

(ix) A participant's ability to roll over or transfer funds from a SEP-IRA to another IRA, SEP-IRA, or retirement bond, and how such a rollover or transfer may be effected without causing adverse tax consequences.