



DEPARTMENT OF LABOR

Employee Benefits Security Administration

29 CFR Part 2520

RIN 1210-AB62

Electronic Filing of Notices for Apprenticeship and Training Plans and Statements for Pension Plans for Certain Select Employees

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document contains final regulations that revise the procedures for filing apprenticeship and training plan notices and “top hat” plan statements with the Secretary of Labor. The final regulations require electronic submission of these notices and statements, as opposed to paper filings. The final regulations will make filing these notices and statements easier and lower regulatory burdens on these plans. The final regulations also will enable the Department of Labor to make reported data more readily available to participants and beneficiaries and other interested members of the public than in the past.

DATES: The final rule is effective [INSERT 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Marjorie M. Kress or Thomas M. Hindmarch, Office of Regulations and Interpretations, Employee Benefits Security Administration, Department of Labor, at (202) 693-8500.

## SUPPLEMENTARY INFORMATION:

### **A. Background**

Part 1 of Title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA), contains reporting and disclosure requirements applicable to plans covered by ERISA. For instance, sections 103 and 104 of ERISA establish requirements for the publication and filing of annual reports, while sections 102 and 104 of ERISA require plan administrators to furnish summary plan descriptions and summaries of material modifications or changes to participants and beneficiaries.

Section 104(a)(3) of ERISA, however, authorizes the Secretary to exempt any welfare benefit plan from all or part of the reporting and disclosure obligations, or to provide simplified reporting and disclosure, if the Secretary finds that the requirements are inappropriate for these plans. Under this authority, the Secretary, in 1980, issued 29 CFR 2520.104-22, which provides an exemption from the reporting and disclosure provisions of Part 1 of Title I of ERISA for employee welfare benefit plans that provide only apprenticeship or training benefits, or both, if certain conditions are met.<sup>1</sup> Under this regulation, a welfare plan that provides only these benefits is not required to meet the requirements of Part 1 of Title I if the administrator files with the Secretary a notice as described in § 2520.104-22 by mail or personal delivery, takes steps reasonably designed to ensure that the information required to be contained in the notice is disclosed to employees of employers contributing to the plan who may be eligible to enroll, and makes the notice available to these employees upon request.

Similarly, section 110(a) of ERISA permits the Secretary to specify an alternative form of compliance with the reporting and disclosure obligations of Part 1 of Title I for any pension plan

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<sup>1</sup> 40 FR 34526, 34529-34530, 34536 (Aug. 15, 1975); 45 FR 15527 (Mar. 11, 1980).

or class of pension plans subject to ERISA if certain findings are made. Under the authority of section 110(a), in 1975 the Department issued 29 CFR 2520.104-23 to provide an alternative method of compliance with the reporting and disclosure requirements of Part 1 of Title I for unfunded or insured pension plans established for a select group of management or highly compensated employees (“top hat” plans).<sup>2</sup> Under the alternative method of compliance, the administrator of a top hat plan satisfies the requirements for the reporting and disclosure provisions of Part 1 of Title I by filing a statement with the Secretary by mail or personal delivery to the address specified in the regulation, and by providing plan documents, if any, to the Secretary upon request. The statement must include the information listed in the regulation.

On September 30, 2014, the Department published in the **Federal Register** a proposed rule that would revise the procedures for filing apprenticeship and training plan notices under § 2520.104-22 and top hat plan statements under § 2520.104-23 to require electronic submission of these notices and statements.<sup>3</sup> On the same date, the Department also made available a new web-based filing system for these notices and statements.<sup>4</sup> Use of this web-based filing system was voluntary until the adoption of this final rule. Approximately 65% of the apprenticeship and training plan notices and approximately 54% of the top hat plan statements have been filed electronically since then.<sup>5</sup>

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<sup>2</sup> 40 FR 34526, 34530, 34536 (Aug. 15, 1975).

<sup>3</sup> 79 FR 58720.

<sup>4</sup> Available at <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/e-file/tophat-plan-filing-instructions> (for top hat plans) and <https://www.dol.gov/agencies/ebsa/employers-and-advisers/plan-administration-and-compliance/reporting-and-filing/e-file/apprenticeship-and-training-plan-filing-instructions> (for apprenticeship and training plan notices).

<sup>5</sup> During the three year period from January 1, 2015, to December 31, 2017, 112 of the 171 apprenticeship and training plan notices and 2,964 of the 5,444 top hat plan statements filed with the Department were submitted electronically using the Department’s web-based filing system.

In the proposal, the Department solicited comments on the electronic filing mandate as well as on the design and operation of its web-based filing system.<sup>6</sup> The Department received one written comment, a copy of which is available under the “public comments” section of the Department’s website at <https://www.dol.gov/agencies/ebsa/laws-and-regulations/rules-and-regulations/public-comments/1210-AB62>. Although this commenter applauded the Department for recognizing the benefits of electronic filing of these notices and statements, the comment letter focused primarily on the need (in this commenters’ view) for the Department to update its regulation pertaining to the use of electronic media by plan administrators to furnish disclosures to participants and beneficiaries. After careful consideration of the comment, the final rule amends 29 CFR 2520.104-22(c) (i.e., apprenticeship and training plan notices) and 29 CFR 2520.104-23(c) (i.e., top hat plan statements), as proposed.

## **B. Final Regulation**

The final rule revises the current procedures for filing apprenticeship and training plan notices under § 2520.104-22 and top hat plan statements under § 2520.104-23 with the Secretary of Labor to require electronic submission of these notices and statements. The final rule does not change the current content requirements in either of these regulations.<sup>7</sup> The final rule requires electronic filing with the Secretary through EBSA’s website in accordance with instructions published by the Department. Going forward, EBSA’s web-based filing system will be the exclusive method for filing these notices and statements; filings by mail or personal delivery will no longer be accepted. The new web-based system is designed to assist administrators by

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<sup>6</sup> In the preamble to the proposal, the Department stated that notices and statements will be posted on EBSA’s website and explicitly requested public comment as to whether there are any concerns with making information in the notices and statements publicly accessible online. EBSA received no comments in response to this request.

<sup>7</sup> The new web-based filing system requires filers to input an email address. Although neither regulation explicitly mentions an email address, the Department does not view this item as a content requirement of the regulations. Rather, the email address is needed for system functionality because without it the filer would not receive instantaneous confirmation of the filing.

ensuring that all of the information required by the regulations is included in the notice or statement before the filing can be completed through the website. Upon submission of a completed filing, the new web-based filing system sends an electronic confirmation of receipt to the administrator. This confirmation is not available through the existing paper-based filing system. The design of the new filing system facilitates the requirement that plan administrators of apprenticeship and training plans make notices available to participants upon request as required under § 2520.104-22(a)(3). Filings are now available to the public on the Department's website at <http://www.dol.gov/ebsa>.

### **C. Regulatory Impact Analysis**

#### *1. Executive Orders 12866 and 13563*

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing and streamlining rules, and promoting flexibility.

Under Executive Order 12866, "significant" regulatory actions are subject to the requirements of the executive order and review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 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.

OMB determined that this action is not "significant" within the meaning of section 3(f)(4) of the Executive Order, and therefore the rule was not reviewed by OMB under Executive Order 12866. The rule merely replaces the paper-based filing of apprenticeship and training plan notices and top hat plan statements with an electronic filing system and does not change the content of the notices and statements. Therefore, as discussed below, the Department has determined that this regulatory action will result in small cost savings that are attributable to reduced material and postage costs and time savings resulting from a more user-friendly filing system.

This final rule is not subject to EO 13771 because it is not significant under EO 12866.

## *2. Regulatory Flexibility Analysis*

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) imposes certain requirements with respect to Federal rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedures Act (5 U.S.C. 551 et seq.) and that are likely to have a significant economic impact on a substantial number of small entities. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the RFA requires the agency to present a final regulatory flexibility analysis describing the rule's impact on small entities and explaining its decision with respect to the application of the rule to small entities. Pursuant to section 605(b) of the RFA, the Department certified that the proposed rule did not have a significant

economic impact on a substantial number of small entities and provided an analysis of the rationale for that certification. In the preamble of the proposed rule, the Department requested comments regarding the certification; however no comments were received. Based on the rationale set out in the proposal and the absence of any comments, the Department hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

Section 610 of the RFA requires that an agency review each rule that has or will have a significant economic impact on a substantial number of small entities within ten years of publication of a final rule. EBSA initiates a Section 610 review to determine if the provisions of a rule should be continued without change, rescinded, or amended to minimize adverse economic impact on small entities. The preamble of the proposed rule requested comments on other possible changes or amendments to the two regulations (§§ 2520.104-22(c) and 2520.104-23(c)) that are the subject of this final rule. EBSA received no comments in response to this request.

### *3. Paperwork Reduction Act*

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the Department's proposed regulation, "Electronic Filing of Notices for Apprenticeship and Training Plans and Statements for Pension Plans for Certain Select Employees" solicited comments on the information collections included therein. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with the publication of the proposed regulation, for OMB's review. The Department received one comment that was supportive of the proposed changes to the information collections.

In connection with publication of this final regulation, the Department is submitting an ICR to OMB requesting approval of a revision to OMB Control Number 1210-0153. The Department will notify the public when OMB approves the revised ICR.

A copy of the ICR may be obtained by contacting the PRA Addressee: G. Christopher Cosby, Office of Policy and Research, U.S. Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N-5718, Washington DC 20210; telephone (202) 693-8410; fax: (202) 2195333. These are not toll-free numbers. ICRs submitted to OMB also are available at <http://www.Reginfo.gov>.

As stated earlier in this preamble, § 2520.104-22 provides an exemption to the reporting and disclosure provisions of Part 1 of Title I of ERISA for employee welfare benefit plans that provide only apprenticeship or training benefits, or both, if the plan administrator: (1) files a notice with the Secretary that provides the name of the plan, the plan sponsor's Employer Identification Number (EIN), the plan administrator's name, and the name and location of an office or person from whom interested individuals can obtain certain information about courses offered by the plan; (2) takes steps reasonably designed to ensure that the information required to be contained in the notice is disclosed to employees of employers contributing to the plan who may be eligible to enroll in any course of study sponsored or established by the plan; and (3) makes the notice available to these employees upon request. Prior to the effective date, the plan administrator may file the notice with the Secretary by mailing or delivering it to the Department at the address in the regulation.

Section 2520.104-23 provides an alternative method of compliance with the reporting and disclosure provisions of Title I of ERISA for unfunded or insured plans established for a select group of management or highly compensated employees (i.e., top hat plans). In order to satisfy

the alternative method of compliance, the plan administrator must: (1) file a statement with the Secretary of Labor that includes the name and address of the employer, the employer EIN, 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 employees covered by each; and (2) make plan documents available to the Secretary upon request. Only one statement needs to be filed for each employer maintaining one or more of the plans. Prior to the effective date, the statements may be filed with the Secretary by mail or personal delivery.

The final rule replaces the paper-based filing of apprenticeship and training plan notices and top hat plan statements with an electronic filing system. No substantive changes have been made to the notices and statements. On average, the Department annually receives approximately 57 apprenticeship and training plan notices and approximately 1,815 top hat plan statement filings. The Department estimates in-house human resource professionals on average will spend 10 minutes preparing each filing on the Department's electronic filing system. Based on the foregoing, the total burden for filing is 9 hours for apprenticeship and training plan notice filings and 303 hours for top hat plan statement filings, resulting in an overall total of 312 burden hours. This reflects a 250-total-hour burden reduction (approximately \$11,000 equivalent cost) from the estimated hour burden associated with optional paper-based filing.

The Department assumes that no other cost burden is associated with this ICR, because in-house staff will prepare and electronically file the notices on behalf of each plan.

These paperwork burden estimates are summarized as follows:

Title: Alternate Reporting Methods for Apprenticeship and Training Plan Notices and Top Hat Plan Statements.

OMB Control Number: 1210-0153.

Affected Public: Private Sector--business or other for-profit and not-for-profit institutions.

Respondents: 1,872 (57 apprenticeship and training plans and 1,815 top hat plans).

Responses: 1,872.

Frequency of Response: Annually.

Estimated Total Annual Burden Hours: 312 (9 hours for apprenticeship and training plan notices and 303 hours for top hat plan statements).

Estimated Total Annual Burden Cost: \$0.

#### *4. Congressional Review Act*

The final rule is subject to the Congressional Review Act 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. The final rule is not a “major rule” as that term is defined in 5 U.S.C. 804, because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, or Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

#### *5. 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 final rule does not include any Federal mandate that may result in expenditures by State, local, or tribal governments in the aggregate of more than \$100 million,

adjusted for inflation, or increase expenditures by the private sector of more than \$100 million, adjusted for inflation.

#### *6. Federalism Statement*

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism, and requires the adherence to specific criteria by Federal agencies in the process of their formulation and implementation of policies that have substantial direct effects on the States, the relationship between the national government and States, or on the distribution of power and responsibilities among the various levels of government. This final rule does not have federalism implications because it has no substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Section 514 of ERISA provides, with certain exceptions specifically enumerated, that the provisions of Titles I and IV of ERISA supersede any and all laws of the States as they relate to any employee benefit plan covered under ERISA. The electronic filing requirements in this final rule do not alter the fundamental reporting and disclosure requirements of the statute for employee benefit plans, and, as such, have no implications for the States or the relationship or distribution of power between the national government and the States.

#### **List of Subjects in 29 CFR Part 2520**

Employee benefit plans, Employee Retirement Income Security Act, Pension plans, Pension and welfare plans, Reporting and recordkeeping requirements, Welfare benefit plans.

For the reasons discussed in the preamble, the Department amends 29 CFR part 2520 as follows:

**PART 2520--RULES AND REGULATIONS FOR REPORTING AND DISCLOSURE**

1. The authority citation for part 2520 is revised to read as follows:

**Authority:** 29 U.S.C. 1021–1025, 1027, 1029–1031, 1059, 1134 and 1135. Secretary of Labor's Order 1-2011, 77 FR 1088 (January 9, 2012). Sec. 2520.101-2 also issued under 29 U.S.C. 1132, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.102-3, 2520.104b-1 and 2520.104b-3 also issued under 29 U.S.C. 1003, 1181–1183, 1181 note, 1185, 1185a–b, 1191, and 1191a–c. Secs. 2520.104b-1 and 2520.107 also issued under 26 U.S.C. 401 note, 111 Stat. 788. Sec. 2520.101-5 also issued under sec. 501 of Pub. L. 109-280, 120 Stat. 780, and sec. 105(a), Pub. L. 110-458, 122 Stat. 5092.

2. Section 2520.104-22 is amended by revising paragraph (c) to read as follows:

§2520.104-22 Exemption from reporting and disclosure requirements for apprenticeship and training plans.

\* \* \* \* \*

(c) The notice referred to in paragraph (a) of this section shall be filed with the Secretary electronically in accordance with the instructions published by the Department.

3. Section 2520.104-23 is amended by revising paragraph (c) to read as follows:

§2520.104-23 Alternative method of compliance for pension plans for certain selected employees.

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(c) Electronic filing of statement. Statements referred to in paragraph (b) of this section shall be filed with the Secretary electronically in accordance with the instructions published by the Department.

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Signed this 31st day of May, 2019.

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Preston Rutledge,  
*Assistant Secretary, Employee Benefits Security Administration, U.S. Department of Labor.*

**Billing Code: 4510-29-P**

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