

§ 2520.104b-3

29 CFR Ch. XXV (7-1-06 Edition)

(2) In the case of a plan to which no amendments have been made between the end of the time period covered by the last distributed summary plan description (or updated summary plan description), described in section 102 of the Act, and the next occurring applicable date described in paragraph (b)(1) of this section, for purposes of the requirement to furnish the updated summary plan description to each participant, and to each beneficiary receiving benefits under the plan (other than beneficiaries receiving benefits under a welfare plan), required by section 104(b)(1) of the Act, the administrator of an employee benefit plan shall furnish such updated summary plan description no later than 210 days following the end of the plan year which occurs ten years after the last date a change in the information required to be disclosed by section 102 or 29 CFR 2520.102-3 would have been reflected in the most recently distributed summary plan description (or updated summary plan description), as described in section 102 of the Act.

(c)-(f) [Reserved]

(g) *Terminated plans.* (1) If, on or before the date by which a plan is required to furnish a summary plan description or updated summary plan description to participants and pension plan beneficiaries under this section, the plan has terminated within the meaning of paragraph (g)(2) of this section, the administrator of such plan is not required to furnish to participants covered under the plan or to beneficiaries receiving benefits under the plan a summary plan description.

(2) For purposes of this section, a plan shall be considered terminated if:

(i) In the case of an employee pension benefit plan, all distributions to participants and beneficiaries have been completed; and

(ii) In the case of an employee welfare benefit plan, no claims can be incurred which will result in a liability of the plan to pay benefits. A claim is incurred upon the occurrence of the event or condition from which the claim arises (whether or not discovered).

(h) [Reserved]

(i) *Style and format of the summary plan description.* See § 2520.102-2.

(j) *Contents of the summary plan description.* See § 2520.102-3.

(k) *Option for different summary plan descriptions.* See § 2520.102-4; § 2520.104-26; and § 2520.104-27.

(l) *Employee benefit plan—participant covered under a plan.* See § 2510.3-3(d).

[42 FR 37187, July 19, 1977, as amended at 45 FR 14032, Mar. 4, 1980; 48 FR 1714, Jan. 14, 1983; 61 FR 33849, 33850, July 1, 1996; 67 FR 777, Jan. 7, 2002]

§ 2520.104b-3 Summary of material modifications to the plan and changes in the information required to be included in the summary plan description.

(a) The administrator of an employee benefit plan subject to the provisions of part 1 of title I of the Act shall, in accordance with § 2520.104b-1(b), furnish a summary description of any material modification to the plan and any change in the information required by section 102(b) of the Act and § 2520.102-3 of these regulations to be included in the summary plan description to each participant covered under the plan and each beneficiary receiving benefits under the plan. Except as provided in paragraph (d) of this section, the plan administrator shall furnish this summary, written in a manner calculated to be understood by the average plan participant, not later than 210 days after the close of the plan year in which the modification or change was adopted. This disclosure date is not affected by retroactive application to a prior plan year of an amendment which makes a material modification to the plan; a modification does not occur before it is adopted. For example, a calendar year plan adopts a modification in April, 1978. The modification, by its terms, applies retroactively to the 1977 plan year. A summary description of the material modification is furnished on or before July 29, 1979. A plan which adopts an amendment which makes a material modification to the plan which takes effect on a date in the future must disclose a summary of that modification within 210 days after the close of the plan year in which the modification or change is adopted. Under the authority of sections 104(a)(3) and 110 of the Act, a summary description of a material modification

or change is not required to be disclosed if it is rescinded or otherwise does not take effect. For example, a calendar year plan adopts a modification in June, 1978. The modification, by its terms, becomes effective beginning in plan year 1979. Before the beginning of plan year 1979, the prospective modification is withdrawn. No summary of the material modification is required to be disclosed.

(b) The summary of material modifications to the plan or changes in information required to be included in the summary plan description need not be furnished separately if the changes or modifications are described in a timely summary plan description. For example, a calendar year plan adopts a material modification on June 3, 1976. The modification is incorporated in a summary plan description furnished on July 15, 1977. No separate summary of the material modification is furnished. The plan adopts another material modification September 15, 1977. A separate summary of the modification is furnished on or before July 29, 1978.

(c) The copy of the summary plan description furnished in accordance with §§ 2520.104b-2(a)(1)(i) and 2520.104b-4 shall be accompanied by all summaries of material modifications or changes in information required to be included in the summary plan description which have not been incorporated into that summary plan description.

(d) *Special rule for group health plans—*
(1) *General.* Except as provided in paragraph (d)(2) of this section, the administrator of a group health plan, as defined in section 733(a)(1) of the Act, shall furnish to each participant covered under the plan a summary, written in a manner calculated to be understood by the average plan participant, of any modification to the plan or change in the information required to be included in the summary plan description, within the meaning of paragraph (a) of this section, that is a material reduction in covered services or benefits not later than 60 days after the date of adoption of the modification or change.

(2) *90-day alternative rule.* The administrator of a group health plan shall not be required to furnish a summary of any material reduction in covered

services or benefits within the 60-day period described in paragraph (d)(1) of this section to any participant covered under the plan who would reasonably be expected to be furnished such summary in connection with a system of communication maintained by the plan sponsor or administrator, with respect to which plan participants are provided information concerning their plan, including modifications and changes thereto, at regular intervals of not more than 90 days and such communication otherwise meets the disclosure requirements of 29 CFR 2520.104b-1.

(3) *“Material reduction”.* (i) For purposes of this paragraph (d), a “material reduction in covered services or benefits” means any modification to the plan or change in the information required to be included in the summary plan description that, independently or in conjunction with other contemporaneous modifications or changes, would be considered by the average plan participant to be an important reduction in covered services or benefits under the plan.

(ii) A “reduction in covered services or benefits” generally would include any plan modification or change that: eliminates benefits payable under the plan; reduces benefits payable under the plan, including a reduction that occurs as a result of a change in formulas, methodologies or schedules that serve as the basis for making benefit determinations; increases premiums, deductibles, coinsurance, copayments, or other amounts to be paid by a participant or beneficiary; reduces the service area covered by a health maintenance organization; establishes new conditions or requirements (*e.g.*, preauthorization requirements) to obtaining services or benefits under the plan.

(e) *Applicability date.* Paragraph (d) of this section is applicable as of the first day of the first plan year beginning after June 30, 1997.

(f)–(g) [Reserved]

[Approved by the Office of Management and Budget under control number 1210-0039]

[42 FR 37188, July 19, 1977, as amended at 62 FR 16985, Apr. 8, 1997; 62 FR 36205, July 7, 1997; 65 FR 70243, Nov. 21, 2000; 66 FR 34994, July 2, 2001; 67 FR 777, Jan. 7, 2002]