

## **D. Regulatory Impact Analysis**

### **Executive Order 12866 Statement**

Under Executive Order 12866, the Department must determine whether a regulatory action is “significant” and therefore 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’s (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.

Pursuant to the terms of the Executive Order, it has been determined that this regulatory action is likely to have an annual effect on the economy of approximately \$100 million. Therefore, this action is being treated as “economically significant” and subject to OMB review under section 3(f)(1) of Executive Order 12866. The Department accordingly has undertaken to assess the costs and benefits of this regulatory action in satisfaction of the applicable requirements of the Executive Order and provides herein a summary discussion of its assessment.

The amendments contained in this final rule conform the annual reporting and disclosure regulations promulgated under Title I of ERISA to final revisions to the 5500 Forms and instructions being issued simultaneously with this final rule. Inasmuch as the amendments contained in this final rule implement the forms revisions contained in the Forms Revision Notice being published simultaneously with this final rule, the Department’s assessment pursuant to the Executive Order combines the regulatory amendments and the form revisions, treating these changes as a coordinated regulatory action. The Department’s assessment, described below, takes into account the public comments received in response to the July 2006 Proposal and the Supplemental Notice, which are discussed in detail in the preamble of the Forms Revision Notice. That discussion, to which reference is made throughout this assessment, is hereby incorporated into this assessment by reference.

In accordance with OMB Circular A-4 (available at [www.whitehouse.gov/omb/circulars/a004/a-4.pdf](http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf)), Table 1 below depicts an accounting statement showing the Department's assessment of the net annual cost reduction associated with the provisions of the final rule and forms revisions. In summary, the Department anticipates that this action will produce aggregate cost savings of up to \$97.36 million per year, beginning with the return/reports filed for plan year 2009, which is when all form changes will be fully implemented. As described more fully below, the Department believes that the impact of these changes will affect individual employee benefit plans disparately, depending on their individual circumstances. While most employee benefit plans are likely to experience a decrease in costs, some plans may see an increase in costs due to these rules. Further information about the relative increase or decrease in costs likely for particular plan types is described below.

TABLE 1.--ACCOUNTING STATEMENT: ESTIMATED COST REDUCTION FROM THE CURRENT REPORTING REQUIREMENTS TO THE 2009 REPORTING REQUIREMENTS [IN MILLIONS]

Category	Net Cost Reduction
Annualized Monetized Benefit	\$97.4 million

**Need for Regulatory Action**

As described in the preambles to the July 2006 Proposal and the Supplemental Notice, the Department is promulgating these amendments of the annual reporting regulations, the revision of the Form 5500 Annual Return/Report and its instructions, and the creation of the Short Form 5500 and its instructions, with the goal of reducing the overall burden of the statutory reporting requirements and the forms without sacrificing the quality of the information collected. This action also furthers three specific Departmental initiatives, described earlier in this preamble: (1) creating a fully electronic filing system for processing the annual reports filed by employee benefit plans; (2) responding to reports from the GAO and the ERISA Advisory Council suggesting the need for substantive changes in the information gathered through the 5500 Forms, specifically respecting fees and expenses of employee benefit plans; and (3) effectuating new reporting and disclosure requirements contained in the PPA.

The principal reforms contained in this final action include the adoption of the Short Form 5500, the revision of reporting requirements for Code section 403(b) plans, the creation of separate Schedules SB and MB to replace the Schedule B to report actuarial information, the elimination of IRS-only schedules, and the expansion of fee reporting in Schedule C. Because of the importance of these annual return/reports as a source of information for participants and beneficiaries, as an enforcement and research tool for

the Department, and as a source of information and data for use by other federal agencies, Congress, and the private sector in assessing employee benefit, tax, and economic trends and policies, the final regulatory action increases the amount and improves the quality of information that plans must disclose. Because of the voluntary nature of the employee benefit system, however, the Department, in shaping this regulatory action, has carefully balanced the need for increased and improved disclosure and plan administrators' and sponsors' interest in minimizing reporting costs. As a result, these final changes are anticipated to result in an aggregate reduction of reporting costs for filers as compared with the reporting costs before promulgation of these changes. As explained below, the Department's assessment results in a conclusion that the benefits to be derived from this regulatory action justify the costs that the action imposes on the public.

## **Regulatory Alternatives**

Executive Order 12866 directs federal agencies promulgating regulations to evaluate regulatory alternatives. The Department and the other Agencies have done so in the process of developing this final action.<sup>1</sup> The preambles to the July 2006 Proposal and the Supplemental Notice

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<sup>1</sup> As explained elsewhere in this preamble and in the preamble to the Forms Revision Notice, the IRS and the PBGC act jointly with the Department in promulgating the 5500 Forms. The assessment under E.O. 12866 described in this preamble, therefore, makes reference to the three Agencies' decisions in finalizing the forms changes, as well as the Department's decisions in finalizing the amendments to the reporting regulations under Title I of ERISA.

describe the regulatory alternatives that were considered in making those proposals, including the possibilities of different eligibility criteria for the Short Form 5500; different approaches for satisfying the PPA requirements for additional actuarial and asset information reporting; and different types of reporting requirements for Code section 403(b) plans. In moving from the proposals to final action, the Department also considered alternatives set forth in public comments, weighing their costs and benefits against the initial proposed actions. The final decisions regarding the regulatory amendments and forms revisions are set forth and explained elsewhere in this document and in the Forms Revision Notice issued simultaneously with this document and are assessed further below. The following summarizes major alternatives considered but not adopted in finalizing these proposals.

Eligibility for Short Form 5500 for certain plans with fewer than 25

participants. In considering public comments in response to both the July 2006 Proposal and the Supplemental Notice, several alternatives to the proposal regarding eligibility to file the Short Form 5500 were considered but not adopted. Specifically, alternatives considered included (1) relaxing the proposed eligibility requirement, applicable to all small plans (with fewer than 100 participants), that 100 percent of the plan's assets be invested in secured, easy to value assets, and (2) permitting all plans with fewer than 25 participants to file the Short Form 5500, regardless of whether the plan's investments were so invested.

As described more fully in the preamble to the Forms Revision Notice, the benefits to be gained through the ability to exercise oversight of small plans that invest in other types of assets justifies not diminishing the current burden for plans with fewer than 25 participants by having them continue to file the same information currently required on those assets. Permitting plans with employer securities or other assets that are difficult to value to file the limited information in the Short Form 5500 would be inconsistent with important policy objectives, which are underscored by the PPA's emphasis on increasing plan transparency, more accurately measuring plan assets, increasing participant control over the disposition of employer securities in defined contribution plans, and expanding the annual reporting requirements for multiemployer plans. Valuation of difficult-to-value assets, such as employer securities, may provide an opportunity for abuse or mismanagement that is not lessened by a plan's smaller size. The additional oversight possible through increased reporting responsibilities justifies the additional burden on such plans.

In any event, as described in the Forms Revision Notice, the Department estimates that 95 percent of single-employer non-403(b) plans will qualify to file the Short Form 5500, about 75 percent of which will be plans with fewer than 25 participants; expanded eligibility would affect about 25,000 plans. Further, restricting Short Form 5500 eligibility based on the

nature of a plan's asset investments will not deprive plans with fewer than 25 participants that are not eligible to file the Short Form of simplified annual filing methods. Those small plans will still be entitled to use other simplified reporting options available to small plans under the Form 5500 Annual Return/Report.

Scope of Code section 403(b) plan reporting. The Department considered, but rejects, alternatives, suggested by commenters, to its proposal regarding expanded reporting requirements for Code section 403(b) plans that would have retained the current limited reporting requirements for such plans or modified the proposal to permit such plans their current exemption from annual audit and accountant's opinion requirements. The Department rejects these alternatives because they would significantly reduce or eliminate the benefit that will flow from expanded reporting by Code section 403(b) plans, which the Department believes will result in significant improvements in the administration of Code section 403(b) plans covered by Title I of ERISA, reducing the rate of violations currently being found in investigations of Code section 403(b) plans and increasing benefit security for such plans' participants and beneficiaries.

Scope of Schedule C reporting obligations. The Department considered and rejects several alternative approaches to the reporting of direct and indirect compensation on the Schedule C prior to developing the final decisions



embodied in this action. Specifically, the Department considered and rejects alternatives that would have limited reporting of indirect compensation, including requiring reporting of only indirect compensation received by providers with direct service relationships with the plan; adding a “de minimis” exception for reporting cash compensation under a certain dollar amount; and reinstating the “top 40” provider limitation. The Department assessed the potential cost savings of these and other alternatives that would have reduced the amount and detail of information on indirect compensation required to be reported against the benefits to be gained through increased transparency regarding compensation paid to plan service providers by third parties. The Department believes that the increased transparency that will flow from the indirect compensation reporting required by this final rule will assist plan fiduciaries in assessing the value and appropriateness of their service provider relationships, making more efficient transactions possible and preventing abuses that might arise through receipt of indirect compensation. The Department’s modification of its proposals on Schedule C disclosures, described in detail in the Forms Revision Notice, represents a compromise that balances the need for additional disclosure in this area against the cost to the regulated entities that additional disclosure would likely impose.

## **Benefits and Costs**

The Department believes that the benefits to be derived from this final regulatory action, including the final amendments to the reporting regulations and the final adoption of forms revisions, justify their costs. The Department further believes that these revisions to the existing reporting requirements will both reduce aggregate reporting costs and enhance protection of ERISA rights. The Department conducted a thorough assessment of the costs and benefits of these changes as originally proposed. The major proposed changes from the July 2006 Proposal that are promulgated in this final rule virtually without modification include: (1) adoption of the Short Form 5500; (2) removal of the IRS-only schedules; and (3) adoption of fuller reporting requirements for Code section 403(b) plans.

Changes proposed in the Supplemental Notice that are being finalized herein without substantial change include: (1) adoption of separate Schedules MB and SB to replace Schedule B; and (2) adoption of the Short Form 5500 as one method of compliance to effectuate the PPA's directive to establish simplified reporting for plans with fewer than 25 participants.

The discussion below under Benefits and Costs presents the Department's assessment of this final action as a whole and provides discussion of the major aspects of the final action that contributed to the assessment. The discussion also makes note of some of the modifications to the proposed changes that are incorporated into the final action and

describes the extent to which those modifications have affected the Department's assessment of this action's costs and benefits.

**Benefits.** As previously described in the July 2006 Proposal and in the Supplemental Notice, the regulatory amendments and revised versions of the 5500 Forms announced today will provide a standardized, streamlined alternative means of compliance with applicable statutory reporting requirements and will also provide appropriate simplified annual reports and exemptions under section 104(a)(2) and (3) of ERISA. The revised Form 5500, the Short Form 5500, and their schedules will ease plan administrators' compliance with reporting requirements and greatly enhance the utility and accessibility of information reported to the government, participants and beneficiaries, and others. Together with the Department's planned program for assisting filers in the preparation and electronic submission of filings, the revised 5500 Forms will give plan administrators clear guidance and a supportive, routine mechanism for satisfying their reporting obligations. The revised 5500 Forms also is designed so that the Department can efficiently capture the information electronically and assemble it into an electronic database so that the information can be processed and analyzed in many beneficial ways. These include monitoring compliance with ERISA's reporting and other requirements; targeting and carrying out prompt and effective enforcement actions; informing participants and beneficiaries of the characteristics, operations, and financial

status of their benefit plans; producing statistics on the employee benefit system, monitoring trends therein, and informing the public; and assembling information and conducting research that advances knowledge and fosters the formulation of sound public policies toward employee benefits.

Removal of the IRS-only schedules. As explained in the Forms Revision Notice published simultaneously with this final rule, the elimination of the IRS-only schedules (Schedule E and Schedule SSA) beginning with return/reports for the 2009 plan year facilitates the change to mandatory electronic filing, which is expected to yield substantial benefits. Title I information that was previously collected in the eliminated schedules will be collected in other parts of the 5500 Forms. The Department understands that the IRS is currently considering whether to continue to collect some of the omitted IRS-only information via other Treasury or IRS vehicles. The impact of the removal of these schedules, therefore, is anticipated to reduce reporting costs, as estimated below, while preserving ERISA protections.

Establishment of a Short Form 5500 for certain small plans. The Short Form 5500 will substantially reduce reporting costs (as estimated below) for eligible filers, while continuing the collection of sufficient information to preserve ERISA protections, and satisfying the enforcement, research, and regulatory needs of the Agencies, as well as the disclosure needs of participants and beneficiaries. The small single-employer plans targeted for

eligibility (those that invest solely in secure assets that are held or issued by regulated financial institutions and have a fair market value that is easily determined) are less at risk of harm through abuse or mismanagement and can benefit through the reduced filing costs. The eligibility conditions for filing the Short Form 5500, including the requirements relating to security and valuation of the plan's investments, ensure both adequate disclosure to participants and beneficiaries in plans using the Short Form 5500 and adequate annual reporting to the Agencies. Small plans that are not eligible to file the Short Form 5500 remain eligible to file simplified reports under currently available methods of filing.

Elimination of the special reporting rules for Code section 403(b) plans. As noted below, this revision is expected to increase reporting costs for affected plans. The Department believes, however, that these added costs are justified by the need to better protect the participants and beneficiaries of these plans. As discussed in the preamble to the Notice of Adoption of Forms Revisions, increased reporting by Code section 403(b) plans is anticipated to provide substantial benefits through better administration of those plans and increased oversight by the Agencies and the public. Amending the annual reporting requirements to place Code section 403(b) plans on par with other ERISA-covered pension plans will achieve these results. The Department anticipates that most small Code section 403(b) plans will be eligible to use the Short Form 5500, and thus will only have to

meet that limited filing obligation. The result of this change is therefore only a modest increase in the annual reporting burden on small Code section 403(b) plan filers.

Schedule C Fee and Compensation Reporting. The Department has modified its proposal concerning additional reporting of direct and indirect compensation and fees paid to plan service providers on Schedule C to reach a balance between the cost to plans and providers of gathering the required information and the need for increased transparency regarding such fees and their potential effect on plans. The modifications reduce reporting burden for indirect compensation that is difficult to track on a plan-by-plan basis (e.g., “float” and “soft dollars”), while maintaining the basic requirement that all compensation over \$5,000, whether direct or indirect, must be reported, or, at a minimum, disclosed to the plan fiduciary at an appropriate time. As discussed in the preamble to the Forms Revision Notice, the Department has also clarified that health and welfare plans exempt under 29 CFR 2520.104-44 are not required to file the Schedule C. The Department believes that the final forms revisions for Schedule C, which will improve disclosure of both direct and indirect compensation without overburdening the efficient delivery of necessary services to plans, will provide substantial benefits to plans and their participants and beneficiaries. Plan administrators, the Department, and the public will be better able to monitor the compensation arrangements of plan service providers, better

able to understand the impact of fees on plan assets, and better able to evaluate the value of purchased services. In addition, it is expected that plan administrators should be better able to negotiate fair prices for necessary plan services.

Creation of separate actuarial schedules for single employer defined benefit plans and multiemployer defined benefit and certain money purchase plans (Schedules SB and MB) to reflect PPA changes in funding and annual reporting requirements. Certain changes to Schedule B were proposed in the July 2006 Proposal. After passage of the PPA, these proposals for Schedule B were revised in the Supplemental Notice to effectuate the additional reporting requirements of the PPA , with the Schedule B being divided into two separate schedules, one for multiemployer defined benefit plans and certain money purchase plans (the Schedule MB) and another for single-employer defined benefit plans (the Schedule SB). As noted below, the adoption of this change is expected to decrease reporting costs for single-employer plans and slightly increase reporting costs for multiemployer plans. The small cost increases for multiemployer plans, however, are justified by the need to better monitor plan funding. This information is needed by participants, beneficiaries, and the Agencies, particularly the PBGC, to improve their ability to assess the financial condition of the plan.

Additional data elements reported on Schedule R. Consistent with the PPA, the new Schedule R will require increased reporting by multiemployer defined benefit pension plans regarding contributing employers, multiemployer plan mergers, withdrawing employers and their withdrawal liabilities, and participants for whom no employer makes contributions. Large single-employer and multiemployer defined benefit plans with 1,000 or more participants will also have to report on their plans' asset allocations, and the duration of debt portfolios. These latter data elements are requested by the PBGC and are not part of the PPA requirements. As noted below, these revisions will increase reporting costs for affected plans. The PPA requires multiemployer defined benefit plans to report this additional information, which is needed by participants, beneficiaries, and the Agencies, particularly the PBGC, to assess the financial risk posed to the plan by a financial collapse or withdrawal of one or more contributing employers.<sup>2</sup> The need for and benefit of these PPA required disclosures are essential to making accurate assessments of the potential risks to which these plans are exposed.

Electronic Filing and Website Display of Form 5500 Information. The requirement to post information electronically will give participants and beneficiaries an additional method of monitoring the financial status of their

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<sup>2</sup> The addition of some of the new data elements were included in the July 2006 Proposal based on the apparent deterioration of the financial condition of multiemployer plans and the PBGC's belief in the need to monitor better companies that are major contributors to those plans.



pension plans. They will be able to access important information instantaneously and without any additional costs involved, as plans must be capable of electronic public disclosure beginning with the 2009 reporting years.

**Costs.** Although the costs to plans of satisfying their annual reporting obligations will be lower under these regulations than they would be under regulations previously in force, they will still be substantial.<sup>3</sup> As shown in Table 2 below, the aggregate cost of such reporting under the regulations and forms previously in force is estimated to be \$425.34 million annually, shared across the 780,000 filers subject to the filing requirement. The Department estimates that the regulations and forms revisions announced today will impose an annual cost burden on the 780,000 filers of only \$327.98 million.<sup>4</sup>

Table 2.--Summary of Costs: Requirements Previously in Effect vs. New Requirements

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<sup>3</sup> The Department believes that the annual cost burden on filers would be higher still in the absence of the regulations in effect prior to this action because filers would then have been required to comply with the statutory filing requirements without the benefit of any regulatory exceptions, simplified reporting, or alternative methods of compliance.

<sup>4</sup> The cost and burden hour estimates for the baseline as well as for the new reporting requirements are much lower than the estimates reported in the July 2006 proposal and the supplemental notice. In the estimates reported in this document, the Department is able to take advantage of updated data, some changes to the model and comments with respect to the burden estimates. More detail about the cost estimates can be found in the section "Assumptions, Methodology, and Uncertainty."

	Total Costs in Dollars (in millions)	Total Costs in Hours (in millions)
Reporting Requirements Prior to this Action	\$425.34	5.32
Change in Costs due to this Action (as of 2009 Plan Year Filings)	-\$97.36	-1.24
Reporting Requirements in effect for Plan Year 2009 Filings	\$327.98	4.08
<u>Note: Number of affected plans: 780,000.</u>		
<del>Note: Number of affected plans: 780,000.</del>		

Because this final action makes substantial changes to the requirements previously in effect, filers will experience some one-time transition costs. The Department examined similar transition cost issues in connection with the last major revision to the Form 5500 Annual Return/Report, which was for plan years beginning in 1999. See 65 FR 5026 (Feb. 2, 2000). Based on information provided by plan service providers and Form 5500 Annual Return/Report software developers at that time, the Department concluded that such costs are generally loaded into the prices paid by plans for affected services and products, spread both across plans and across the expected life of the service and product changes. The Department's estimates provided here are therefore intended to reflect such spreading and loading of these transition costs. That is, the gradual defrayal of the transition costs is included in the annual cost estimates here.

The Department has analyzed the cost impact of the individual revisions. In doing so, the Department took account of the fact that various types of plans would be affected by more than one revision and that the sequence of multiple revisions would create an interaction in the cumulative burden on those plans. For example, large and small Code section 403(b) plans are both affected by the elimination of the limited reporting rules for section 403(b) plans, but small Code section 403(b) plans are also affected by the introduction of the Short Form 5500. The Department quantified the individual revisions as described below.

Removal of the IRS-only schedules. Elimination of the IRS-only schedules beginning with filings for the 2009 plan year will reduce costs on the whole, even though some of the information previously collected in those schedules will continue to be collected by the Department elsewhere in the forms and schedules. The net effect of these changes will be to reduce the total burden for 198,000 affected filers by 530,000 hours. Applying an hourly labor rate of \$86 for service providers and \$59 for plan sponsors, the Department estimates that this revision will lower the aggregate annual reporting cost by an estimated \$39.34 million.<sup>5</sup>

Establishment of a Short Form 5500 for certain small plans. An estimated 594,000 of the 629,000 total small plan filers will be eligible to use the Short

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<sup>5</sup> The appropriateness of the labor rates used in the calculations, as well as on other assumptions, is discussed in the Technical Appendix.

Form 5500. Of these filers, 9,000 plans are estimated to be small Code section 403(b) plans that will also be subject to increased filing requirements. Their annual reporting burden is estimated to increase, as a result, by about \$1.44 million. For the remainder of the Short Form 5500 eligible plans (585,000 plans), the annual reporting burden is reduced by \$72.33 million. This leads to an estimated aggregate saving due to the Short Form 5500 of \$70.90 million (877,000 hours) annually.

Elimination of the special reporting rules for Code section 403(b) plans.

While approximately 16,000 Code section 403(b) plans will be subject to increased reporting requirements, about 9,000 small Code section 403(b) plans will be eligible to use the new Short Form 5500 and will also be eligible for waiver of the audit requirement. The impact of the changes on the small Code section 403(b) plans is quantified above. Seven thousand large Code section 403(b) plans will be required to file a Form 5500 Annual Return/Report similar to those filed by Code section 401(k) plans and will be subject to the audit requirement. Annual reporting costs for large Code section 403(b) plans will increase by an estimated \$7.7 million (or 100,000 hours).

Establishment of Schedules SB and MB to replace Schedule B. Schedule B will be replaced by two separate schedules: a Schedule SB for single employer (including multiple-employer) defined benefit plans and a Schedule

MB for multiemployer defined benefit plans and certain money purchase plans. Overall costs will be reduced by having two separate schedules, each of which is tailored more precisely to a separate targeted group of filers. The 42,000 filers of Schedule SB will therefore see a total annual burden reduction of almost 52,000 hours. Applying an hourly labor rate of \$86 for service providers and \$59 for plan sponsors, the Department estimates that this will lower the annual reporting cost by an estimated \$4.36 million for Schedule SB filers. The 2,300 Schedule MB filers will see a total burden increase of 600 hours because these filers will be required to complete new items. Applying an hourly labor rate of \$86 for service providers and \$59 for plan sponsors, the Department estimates that this will increase the annual reporting cost by an estimated \$47,000. On the whole, replacing Schedule B with new Schedules SB and MB will decrease the aggregate total annual burden by 51,000 hours, or by an estimated \$4.31 million.

Revision of Schedule C (Service Provider Information). Schedule C revisions are intended to clarify the reporting requirements and improve the information plan officials receive regarding amounts being received by plan service providers. The expanded reporting requirements are expected to increase the reporting burden for Schedule C filers by about \$2.44 million. This increase is partly offset by a reduction in burden of \$475,000, resulting from the Department's clarification that welfare plans that meet the conditions of 29 CFR 2520.104-44 are not required to file Schedule C. Jointly,

these changes are anticipated to add annual reporting costs of \$1.97 million (25,000 hours) for 48,000 affected plans.

Additional Data Elements on Schedule R. Changes to Schedule R, which include moving three questions on ESOPs from Schedule E to Schedule R, with an offset for deleting one question, are expected to add \$828,000 in costs (11,000 hours) for 91,000 affected filers.<sup>6</sup> On average, the reporting burden of affected plans is estimated to increase by less than 7 minutes per plan. While some of the affected plans may experience only minimal burden increases, others (particularly very large multiemployer defined benefit plans) will experience an estimated increase in burden of up to three hours.

Adoption of various technical revisions and other miscellaneous revisions to the Form 5500 Annual Return/Report to improve and clarify existing reporting requirements. Several additional questions regarding insurers that fail to supply information, plan failures to pay benefits due, schedules of delinquent participant contributions, blackout compliance, mutual fund dividends, fees paid to administrative service providers, and the number of contributing employers, as well as additional pension plan characteristic codes, were added to the Form 5500 and Schedules A, H, and I. Together

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<sup>6</sup> The introduction of the Short Form 5500 eliminated the requirement of filing the Schedule R for almost 300,000 small plans previously filing Schedule R (about 94 % of all small plans filing Schedule R). This reduction in burden was included in the decrease of reporting burden due to the introduction of the Short Form 5500. The moving of questions from Schedule E to Schedule R (ESOP questions) is counted as a reduction of burden in connection with the removal of the IRS-only schedules and as an increase in burden for Schedule R filers.

these changes are estimated to add \$6.68 million (85,000 hours) to annual reporting costs and affect approximately 187,000 plans.

Electronic Filing and Website Display of Form 5500 Information. These requirements are not anticipated to add any additional costs, as plans are already required to be capable of electronic filing and disclosure beginning with the 2009 reporting year under the electronic filing rule. See 71 FR 41359 (July 21, 2006). The costs and benefits of electronic filing have previously been assessed in connection with promulgation of that rule.

Table 3 contains a summary of the changes in costs, expressed both in dollars and in hours, allocated to the changes outlined above and the number of employee benefit plans affected.

Table 3.--Summary of Changes to the Reporting Requirements: Dollars, Hours, and Affected Plans

<b>Revisions Effective for 2009 Plan Year Filings</b>	<b>Change in Costs in Dollars (in Millions)</b>	<b>Change in Costs in Hours</b>	<b>Number of Affected Plans</b>
Removal of IRS-Only Schedules	-\$39.34	-530,000	198,000
Short Form and small Code Section 403(b) Plans	-\$70.90	-877,000	594,000
Large Code section 403(b) Plans	\$7.70	100,000	7,000
Schedule MB	\$0.047	600	2,000

Schedule SB	-\$4.36	-52,000	42,000
Schedule C	\$1.97	25,000	48,000
Schedule R	\$0.828	11,000	91,000
Technical and Miscellaneous Revisions	\$6.68	85,000	187,000
<b>Total</b>	<b>-\$97.36</b>	<b>-1,237,400</b>	<b>780,000</b>
Note: Some displayed numbers do not sum up to the totals due to rounding.			

The final action does not otherwise alter reporting costs. Plans currently exempt from annual reporting requirements (such as certain small unfunded or fully insured welfare plans and certain simplified employee pensions) will remain exempt. Also, except for Code section 403(b) plans, plans eligible for limited reporting options (such as certain IRA-based pension plans) will continue to be eligible. The revised Form 5500 Annual Return/Report will retain the structure that is familiar to individual and corporate taxpayers – a simple main form with basic identifying information necessary, along with a checklist of the schedules being filed. The structure is designed to aid filers by allowing them to assemble and file a return customized to their plan.

### **Form 5500 Annual Return/Report Changes Effective for the 2007 and 2008 Plan Year Filings**

The sections above describe reporting changes that become effective for the 2009 plan year filings. As discussed in the preamble of the Forms



Revision Notice, the Agencies are making some changes to the reporting requirements for the 2007 and 2008 plan year filings as mandated by the PPA, along with adding a few new Schedule R items for the 2008 plan year filings.<sup>7</sup> Plans with fewer than 25 participants that would meet the conditions for being eligible to file the Short Form 5500 will have the option in their 2007 and 2008 plan year filing of filing an abbreviated version of the Form 5500 Annual Return/Report for “small plan” filers. In addition, defined benefit pension plans and certain money purchase plans will file, for the 2008 plan year, the new actuarial information schedules (Schedules SB and MB, as appropriate) instead of Schedule B. In addition, filers will be required to answer most of the new questions on Schedule R (Questions 13 to 19 of the 2009 Schedule R).<sup>8</sup>

The Department has calculated the burden for the 2008 plan year return/reports as described generally above with respect to the 2009 plan year filings, but appropriately modified for the difference in filing requirements. The Department estimates that the reduction in burden resulting from the simplified filing requirements for the 2007 and 2008 plan year filings will be about half the burden reduction that will result from the introduction of the 2009 Short Form 5500, for two reasons. First, for the 2009 plan year filings, eligible filers will fill out only the Short Form 5500 and Schedules SB or MB, as applicable. While the simplified filing requirements

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<sup>7</sup> As mandated by the PPA, the simplified filing option for small plans with fewer than 25 participants will become effective for 2007 plan year return/reports. No other changes are being made for that filing year.

<sup>8</sup> Filers will be required to provide the answers to these new questions as an attachment.

for plan years 2007 and 2008 will be limited to similar data items as are on the Short Form 5500, the items to be completed are spread over several schedules, requiring filers to review all of the instructions to those schedules. Second, use of the simplified filing requirements for the 2007 and 2008 plan years is optional. The Department has assumed that not all small plan filers will take advantage of this option, given that it will be available only for the 2007 and 2008 plan years.

For the 2007 filing year no other form changes are being made. The Department estimates a burden reduction due to the simplified filings for plans with less than 25 participants of about \$38.00 million (or 471,000 hours). Assuming an additional 30 minute transition burden for reviewing the simplified filing requirements, the estimate for the burden reduction is reduced to \$~~25.6~~25.6562 million (or 317,000 hours).

Without taking any transition burdens into account, the Department has estimated that the revisions for the 2008 plan year will reduce the filing burden by about \$41.5~~14~~14 million (or 511,000 hours). Assuming an additional 30 minute transition burden for reviewing the simplified filing requirements, 150 minutes for Schedule SB, 90 minutes for Schedule MB, and 60 minutes for Schedule R, the Department estimates that for the 2008 plan year the reporting burden will fall by \$~~8.65~~8.6530.23 million from the \$425.34 million that

is estimated under prior rules and forms, to an aggregate burden of ~~\$416.68395.11~~ million.<sup>9</sup>

## **Assumptions, Methodology, and Uncertainty**

The cost and burden associated with the annual reporting requirement for any given plan will depend upon the specific information that must be provided, given the plan's characteristics, practices, operations, and other factors. For example, a small, single-employer defined contribution pension plan filing the new Short Form 5500 should incur far lower costs than a large, multiemployer defined benefit pension plan that holds multiple insurance contracts, engages in numerous reportable transactions, and pays large fees to a number of service providers. The Department separately considered the cost to different types of plans in arriving at its aggregate cost estimates. The Department's basis for these estimates is described below.

Assumptions Underlying this Analysis. The Department's analysis assumes that all benefits and costs will be realized in the first year of the reporting cycle to which the changes apply and within each year thereafter. This assumption is premised on the requirement that each plan will complete a filing annually. The Department has used a "status quo" baseline for this

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<sup>9</sup> Hours are estimated to fall from the 5.32 million estimated under prior rules and forms, to about ~~5.224.94~~ million hours, a reduction of about ~~97374,000~~ hours.

analysis, assuming that the world absent the regulations will resemble the present.<sup>10</sup>

Methodology. Mathematica Policy Research, Inc. (MPR), developed the underlying cost data, which has been used by the Agencies in estimating burden related to the Form 5500 Annual Return/Report during recent years. See 65 FR 21068, 21077-78 (Apr. 19, 2000); Borden, William S., “Estimates of the Burden for Filing Form 5500: The Change in Burden from the 1997 to the 1999 Forms,” Mathematica Policy Research, submitted to U.S. Dept. of Labor May 25, 1999.<sup>11</sup> The cost information was derived from surveys of filers and their service providers, as modified due to comments, which were used to measure the unit cost burden of providing various types of information. Aggregate estimates were produced by interacting these unit cost measures with historical counts of Form 5500 Annual Return/Report filers who provided the respective types of information.

Actuarial Research Corporation (ARC) assembled a new model for estimating burden, based on the Form 5500 Burden Model that MPR most recently used for estimating burdens in October 2004. ARC assembled a simplified model, drawing on implied burdens associated with subsets of filer groups represented in the MPR model. The ARC model is described in broad terms below. Further details about the model are explained in the Technical

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<sup>10</sup> Further detail can be found in the Technical Appendix.

<sup>11</sup> The Mathematica report can be accessed at the Department's Web site at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

Appendix which can be accessed at the Department's Web site at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

To estimate aggregate burdens, types of plans with similar reporting requirements were grouped together in various groups and subgroups. As shown in Table 4, calculations of aggregate cost were prepared for each of the various subgroups both under requirements in effect prior to this action and under the forms as revised. Table 4 also shows the number of plans within each subgroup affected by the revisions. The Total line in Table 4 shows that the aggregate cost under prior and new regulations, respectively, add up to \$425.34 million and \$327.98 million. The universe of filers was divided into three basic plan types: defined benefit pension plans, defined contribution pension plans, and welfare plans. Each of these major plan types was further subdivided into multiemployer and single-employer plans. Defined contribution Code section 403(b) plans were treated separately from other defined contribution plans. Since the filing requirements differ substantially for small and large plans, the plan types were also divided by plan size. For large plans (100 or more participants), the defined benefit plans were further divided between very large (1,000 or more participants) and other large plans (at least 100 participants, but fewer than 1,000 participants). Small plans were divided similarly, except that they were divided into Short Form 5500 eligible and Short Form 5500 ineligible plans, as applicable. For each of these sets of respondents, burden hours per

respondent were estimated for the Form 5500 Annual Return/Report itself and for up to eight schedules.

Table 4.--Number of Affected Filers and Costs under Prior and New Requirements

Type of Plan	Number Affected	Aggregate Cost Under Prior Requirements (In Millions)	Aggregate Cost Under New Requirements (In Millions)
5500 Large Plans (>=100 participants)	152,000	\$177.16	\$175.99
DB, ME, 100-1,000 participants	60	0	\$1.40
DB, ME, > 1,000 participants	90	0	\$1.99
DB, SE, 100-1,000 participants	7,00	0	\$15.38
DB, SE, > 1,000 participants	3,40	0	\$7.08
DC, ME, non-403(b)	1,70	0	\$2.56
DC, ME, Code section 403(b)	8	0	\$0.0035
DC, SE, non-403(b)	57,00	0	\$75.09
DC, SE, Code section 403(b)	7,20	0	\$0.30
Welfare, ME	4,10	0	\$5.64
Welfare, SE	69,00	0	\$67.71
5500 Small Short Form Eligible	594,000	\$234.25	\$139.03
DB, SE	34,00	0	\$35.71
DC, SE, non-403(b)	544,00	0	\$195.65
DC, SE, Code section 403(b)	8,80	0	\$0.37

		0		
		6,00		
Welfare, SE		0	\$2.52	\$1.25
5500 Small Short Form Ineligible	35,000		\$13.92	\$12.96
		20		
DB, ME		0	\$0.16	\$0.18
		1,80		
DB, SE		0	\$1.91	\$1.76
		3,20		
DC, ME, non-403(b)		0	\$1.09	\$1.02
		10		
DC, ME, Code section 403(b)		0	\$0.0042	\$0.0045
		29,00		
DC, SE, non-403(b)		0	\$10.45	\$9.68
		40		
Welfare/ME		0	\$0.17	\$0.18
		30		
Welfare/SE		0	\$0.13	\$0.14
<b>Total</b>	<b>780,000</b>		<b>\$425.34</b>	<b>\$327.98</b>
Note: Some displayed numbers do not sum up to the totals due to rounding.				
DB - defined benefit plans		DC - defined contribution plans		
SE - single-employer plans		ME - multiemployer plans		
Large plans - 100 participants or more		Small plans - fewer than 100 participants		

We also separately estimated the costs for the form and for each schedule. When items on a Form 5500 Annual Return/Report schedule are required by more than one Agency, the estimated burden associated with that schedule is allocated among the Agencies. This allocation is based on whether only a single item on a schedule is required by more than one agency or whether several or all of the items are required by more than one agency. The burden associated with reading the instructions for each item also is tallied and allocated accordingly.

The reporting burden for each type of plan is estimated in light of the circumstances that are known to apply or that are generally expected to apply to such plans, including plan size, funding method, usual investment structures, and the specific items and schedules such plans ordinarily complete. For example, the annual report for a large fully insured welfare plan would consist of only a few questions on the Form 5500, Schedule A (Insurance Information), and Schedules C and G, where applicable. The requirement that this plan provide very limited information on the Form 5500 Annual Return/Report is reflected in the estimates of reporting burden time. By contrast, a large defined benefit pension plan that is intended to be tax-qualified and that uses a trust fund and invests in insurance contracts would be required to submit an annual report completing almost all the line items of the Form 5500, plus Schedule A (Insurance Information), Schedule B (Actuarial Information), Schedule C (Service Provider Information), Schedule D (DFE/Participating Plan Information), possibly the Schedule G (Financial Transaction Schedules), Schedule H (Financial Information), and Schedule R (Retirement Plan Information), and would be required to submit an IQPA's report and opinion. In this way, the Agencies intend meaningfully to estimate the relative burdens placed on different categories of filers.

Burden estimates were adjusted for the proposed revisions to each schedule, including items added or deleted in each schedule and items moved from one schedule to another. The burden for the new Short Form



5500 was derived summing the burden estimates for the comparable line items contained in the current Form 5500 Annual Return/Report.

The Department has not attributed a recordkeeping burden to the 5500 Forms in this analysis or in the Paperwork Reduction Act analysis because it believes that plan administrators' practice of keeping financial records necessary to complete the 5500 Forms arises from usual and customary management practices that would be used by any financial entity and does not result from ERISA or Code annual reporting and filing requirements.

The aggregate baseline burden, as calculated by the ARC model, is the sum of the burden per form and schedule as filed prior to this action multiplied by the estimated aggregate number of forms and schedules filed.<sup>12</sup> The model then estimated the burden impact of changes in the numbers of filings (particularly those associated with the introduction of the Short Form 5500 for most small filers) and of changes made to the form and the various schedules. The model uses data from the Form 5500 Annual Return/Report for plan year 2003, which is the most recent year for which complete data is available.

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<sup>12</sup> To the extent that plans may currently file schedules that are not required, such filings were disregarded in calculating the baseline reporting burden and the final burden.

The model estimated that the proposed revisions will lead to aggregate costs of \$327.98 million, which represents a cost reduction of \$97.36 million from the baseline. While overall costs will be reduced, some large plans may experience cost increases, while small plans will likely experience cost reductions. The total burden estimates, as well as the burden broken out by type of plan, can be found in Table 4, above.

Uncertainty within Estimates. Because the Department has access to the historical Form 5500 Annual Return/Report filing information, the Department has good data for the number of filers that file the various schedules and the types of plans those filers represent. However, there is some uncertainty regarding the unit cost estimates. The Department has no direct measure for the unit costs and uses a proxy adapted from the existing MPR model, which was developed in the late 1990s. In addition, some uncertainty is inherent in any revision to the existing form, and the level of uncertainty increases with the novelty of the revision in question. For example, there is a lesser degree of uncertainty regarding the impact of revisions that delete existing items or move existing items from one schedule to another, while there is greater uncertainty regarding wholly new items of information, such as those involving indirect compensation.

## **Peer Review**

In December 2004, OMB issued a Final Information Quality Bulletin for Peer Review, 70 FR 2664 (January 14, 2005) (Peer Review Bulletin), establishing that important scientific information shall be peer reviewed before it is disseminated by the Federal government. The Peer Review Bulletin applies to original data and formal analytic models used by agencies in regulatory impact analyses. The Department determined that the data and methods employed in its regulatory analysis constituted “influential scientific information” as defined in the Peer Review Bulletin. Accordingly, a peer review was conducted under Section II of the Bulletin. The peer review report concluded that the methodology and data generally were sound and produced plausible estimates, which supported the Department's conclusion that the proposed form changes should reduce the aggregate burden relative to the previous forms. The analysis here for the final regulations and forms revisions uses the same methodology as did the proposal, and the Department, accordingly, is relying on the Peer Review prepared for the Proposal. The Peer Review Report can be accessed at the Department's Web site at [www.dol.gov/ebsa](http://www.dol.gov/ebsa).

## **Regulatory Flexibility Act**

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

Procedure 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. In accordance with section 603 of the RFA, the EBSA presented an initial regulatory flexibility analysis at the time of the publication of the notice of proposed rulemaking describing the impact of the rule on small entities and seeking public comment on such impact. After reviewing and considering the public comments submitted in response to the proposal and the changes that are incorporated into the final regulation, the Department has prepared a final regulatory flexibility analysis, which is presented in this document as part of the broader economic analysis. The objectives of these amended regulations and the associated forms revisions are to streamline reporting and reduce aggregate reporting costs, particularly for small plans, while preserving and enhancing protection of ERISA rights. These purposes are detailed above in this preamble and in the Forms Revision Notice published simultaneously with these regulations.

For purposes of analysis under the RFA, EBSA continues to consider a small entity to be an employee benefit plan with fewer than 100 participants. The basis of this definition is found in section 104(a)(2) of ERISA, which permits the Secretary to prescribe simplified annual reports for pension plans that cover fewer than 100 participants. Under ERISA section 104(a)(3), the Secretary may also provide for exemptions or for simplified reporting and disclosure for welfare benefit plans. Pursuant to the authority of ERISA

section 104(a)(3), the Department has previously issued at 29 CFR 2520.104-20, 2520.104-21, 2520.104-41, 2520.104-46, and 2520.104b-10 certain simplified reporting provisions and limited exemptions from reporting and disclosure requirements for small plans, including unfunded or insured welfare plans, that cover fewer than 100 participants and satisfy certain other requirements.

Further, while some large employers may have small plans, in general small employers maintain most small plans. Thus, EBSA believes that assessing the impact of these proposed rules on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business that is based on size standards promulgated by the Small Business Administration (SBA) (13 CFR 121.201) pursuant to the Small Business Act (15 U.S.C. 631 et seq.). Prior to the proposal, EBSA consulted with the SBA Office of Advocacy concerning use of this participant count standard for RFA purposes, see 13 CFR 121.902(b)(4), and EBSA received no comments suggesting use of a different size standard. The following subsections address specific requirements of the RFA.

Need for the rule and its objectives. The Department is amending the regulations relating to the annual reporting and disclosure requirements of section 103 of ERISA and revising the 5500 Forms that are included in the

Forms Revision Notice being published simultaneously with these regulations. The Department continually strives to tailor reporting requirements to minimize reporting costs, while ensuring that the information necessary to secure ERISA rights is adequately available. The optimal design for reporting requirements to satisfy these objectives changes over time. Benefit plan designs and practices evolve over time in response to market trends, including trends in labor markets, financial markets, health care and insurance markets, and markets for various services used by plans. Partly as a result, the nature and mix of compliance issues and risks to ERISA rights change over time. Changes to ERISA, the Code, and to associated regulations also change the parameters of ERISA rights and the methods needed to protect those rights; in particular, this amendment and the forms revisions are necessary, in part, to implement provisions of the PPA. In addition, the technologies available to manage and transmit information continually advance. It is incumbent on the Department to revise its reporting requirements from time to time to keep pace with such changes. The Department is adopting these regulations and associated forms revisions to readjust its reporting requirements to take into account certain recent changes in markets, the law (including the PPA), and technology, many of which are referred to above in this preamble and/or in the Forms Revision Notice published simultaneously with these regulations.

Agency assessment of significant issues raised by public comments and changes to rule in response to such comments. Commenters were mostly supportive of the adoption of a Short Form 5500. Some commenters objected to excluding certain small plans from eligibility for filing the Short Form 5500, that is, those small plans holding employer securities and other difficult-to-value assets. As discussed elsewhere in this preamble, excluding this small subset of small plans is justified by the nature of these assets, and it would be inappropriate for the Agencies to compromise important Congressional and regulatory policies, leaving participants covered by these small plans with insufficient protection of their retirement savings. The Agencies have taken other steps to reduce the burden on the excluded small plans as much as possible, however, including continuing to allow these plans to qualify for other simplified reporting options. In addition, because the Short Form 5500 will not be available until the 2009 plan year, the Agencies are planning to issue separate guidance for plans with fewer than 25 participants that would permit filing of an abbreviated version of the Form 5500 for the 2007 and 2008 plan years.

While expanding reporting obligations for Code section 403(b) plans, the Agencies have attempted to minimize the burden on small Code section 403(b) plans by not excluding any small Code section 403(b) plan from any simplified reporting option for which such plan is otherwise eligible. In other words, small Code section 403(b) plans will be eligible to avail themselves of

simplified reporting options to the same extent as any other similarly situated plan.

As discussed elsewhere in this preamble, the Agencies are rejecting commenters' suggestion to subject small plans to Schedule C disclosure requirements that do not currently apply to small plans. The Agencies conclude that the comment record in support of the suggestion was insufficient to outweigh the added burden that would be placed on small plans.

The Agencies also are making clarifying changes to instructions for the Short Form 5500, in response to comments, to provide a clearer description of the plans exempt from filing, including small welfare plans, but is refraining from adding similar clarifications to the instructions for individual schedules in order to avoid adding unnecessary review burden for filers.

Description and estimate of number of small entities to which rule will apply.

This final action does not alter the number of small plans required to comply with the annual reporting requirements, although it implements a new Short Form 5500, which is designed specifically to further streamline the limited reporting requirements presently applicable to small plans. The Department estimates that almost six million small, private-sector employee pension and



welfare benefit plans are covered under Title I of ERISA. A large majority of these, however, are fully insured or unfunded welfare benefit plans, which currently are exempt from annual reporting requirements and will continue to be exempt under this final action. Approximately 629,000 small plans, including small pension plans and small funded welfare plans, currently are required to file annual reports and will continue to be so required under this action. Of these, an estimated 594,000 will be eligible to use the new Short Form 5500. Use of the Short Form 5500 is expected to reduce these plans' reporting costs, while preserving or enhancing the protection of their participants' ERISA rights.

Among small plans, perhaps the most affected by this action will be the approximately 9,000 small Code section 403(b) plans. As explained above, such plans are currently subject only to limited annual reporting requirements. This action will increase these plans' reporting costs, although the cost to these plans will be comparable to that currently borne by similar small plans that are not operated under Code section 403(b). As discussed above, the Department believes the added cost to Code section 403(b) plans is justified by the need to strengthen protections under ERISA for those plans' affected participants and beneficiaries. The numbers and types of small plans affected by these regulations and the magnitude and nature of the regulations' effects are further elaborated below.

Description of projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirements and the types of professional skills necessary for preparation of the report or record. The reporting requirements applicable to small plans are detailed above and in the associated Forms Revision Notice. For a large majority of the 629,000 small plans subject to annual reporting requirements, or an estimated 563,000 plans, submission of the Short Form 5500 alone will fully satisfy their annual reporting requirements. All of these plans are eligible for the waiver of audit requirements, and none are defined benefit pension plans. For such plans, therefore, satisfaction of the applicable annual reporting requirements is not expected to require the services of an IQPA or auditor, but will require the use of a mix of clerical and professional administrative skills. For an additional 30,000 small defined benefit pension plans and about 500 money purchase plans that will be eligible to use the streamlined Short Form 5500, satisfaction of the reporting requirements will require additional services of an actuary and submission of the Schedule SB or Schedule MB, as applicable. The remaining 35,000 small plans will not be eligible to use the Short Form 5500 and will continue to be required to file the Form 5500 Annual Return/Report. Of these, less than 2,000 are defined benefit plans that must use an actuary and file Schedule MB or Schedule SB. All will require a mix of clerical and professional administrative skills to satisfy their reporting requirements.

Satisfaction of annual reporting requirements under these regulations is not expected to require any additional recordkeeping that would not otherwise be part of normal business practices.

Table 5 below compares the Department's estimates of small plans' reporting costs under the requirements in effect prior to this action with those under the new requirements for various classes of affected plans. As shown, costs under the new requirements will be lower on aggregate and for most classes of plans. These estimates take account of the quantity and mix of clerical and professional skills required to satisfy the reporting requirements for various classes of plans.

TABLE 5.--SMALL PLAN REPORTING COSTS UNDER PRIOR AND New Requirements

Class of Small Plan	Number Affected	Aggregate Cost Under Prior Requirements (In Millions)	Aggregate Cost Under New Requirements (In Millions)
Defined Benefit Pension, Short Form eligible	34,000	\$35.71	\$24.33
Defined Benefit Pension, Short Form ineligible	2,000	\$2.07	\$1.93
Code Section 403(b)	9,000	\$0.38	\$1.81
Other Defined Contribution, Short Form eligible	544,000	\$195.65	\$111.64
Other Defined	32,000	\$11.54	\$10.70

Contribution Pension, Short Form ineligible			
Funded Welfare	7,000	\$2.83	\$1.58
Other Welfare	None of approximately 6 million	--	--
Total for All Affected Small Plans	629,000	\$248.17	\$151.99
Note: Some displayed numbers do not sum up to the totals due to rounding.			

The Department notes that the estimated reporting costs amount to about \$240 on average for each of the 629,000 small plans subject to annual reporting requirements, or just \$27 if averaged across all of the approximately 5.7 million small plans covered by Title I of ERISA. This compares with roughly \$1,200 on average for each of the 152,000 affected large filers.

The Department is unaware of any relevant federal rules for small plans that duplicate, overlap, or conflict with these regulations.

Description of steps the agency has taken to minimize impact on small entities.

In developing and finalizing these regulations and the associated forms revisions, the Department considered a number of alternative provisions directed at small plans, many of which are discussed elsewhere in this preamble and in the Forms Revision Notice. For example, as discussed in

the Forms Revision Notice, the ERISA Advisory Council suggested that the Department consider exempting welfare plans from reporting requirements, or, alternatively, subjecting all welfare plans to new, separately designed reporting requirements. The Department opted instead to retain both the requirement that small funded welfare plans submit annual reports and the exception from annual reporting requirements for other small welfare plans. Annual reporting by the relatively small number of small funded welfare plans is necessary, in the Department's view, to protect ERISA rights in connection with the assets that such plans hold. A requirement that the remaining approximately six million small welfare plans report annually is not justified insofar as these plans have no assets that need protection and insofar as the vast majority of the plans are fully insured and therefore separately protected by state oversight of the insurance contracts they hold and the insurers that issue them. The Department also considered both narrower and broader eligibility criteria for use of the Short Form 5500, settling on criteria that limit eligibility to plans holding relatively safe and protected assets, which nonetheless includes a large majority of small plans. The Department also considered the inclusion of more or fewer of the items of information formerly collected from small plans in the Form 5500 Annual Return/Report, retaining only those items it believes to be necessary and adequate to the protection of small plan participants' ERISA rights.

### **Paperwork Reduction Act Statement**

In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)), the July 2006 Proposal solicited comments on the information collections included in the proposed amendments to the Department's regulations relating to annual reporting and disclosure requirements under Part 1 of Subtitle B of Title I of ERISA and in the proposed revision of the Form 5500 Annual Return/Report pursuant to Part 1 of Subtitle B of Title I and Title IV of ERISA and the Internal Revenue Code. The Department also submitted an information collection request (ICR) to OMB in accordance with 44 U.S.C. 3507(d), contemporaneously with publication of the July 2006 Proposal, for OMB's review of the Department's information collections previously approved under OMB Control No. 1210-0110.<sup>13</sup> Public comment on the information collections contained in the Supplemental Notice was also solicited in connection with the publication of that Notice in December, 2006.

In connection with publication of this final rule, the Department has submitted an information collection request (ICR) to OMB for its review of the changes in burden estimates for the information collections currently approved under OMB Control No. 1210-0110 that are the result of this final regulatory action and the Forms Revision Notice published simultaneously

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<sup>13</sup> On August 29, 2006, OMB issued a notice indicating that it would continue its approval of the information collections approved under Control No. 1210-0110 as currently in effect, but would not approve the Department's request for approval of revisions to the ICR until after consideration of public comment on the July Proposal and promulgation of a final rule, describing any changes.

with this rule. In order to avoid unnecessary duplication of public comments, the PRA information published in the associated Forms Revision Notice is incorporated herein by this reference in its entirety. The public is advised that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The Department intends to publish a notice announcing OMB's decision upon review of the Department's ICR.

A copy of the ICR can be obtained by contacting the Office of Policy and Research, Employee Benefits Security Administration, U.S. Department of Labor, Room N-5718, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone: (202) 693-8410; Fax: (202) 219-4745. These are not toll-free numbers.

### **Congressional Review Act**

The final rules being issued here are 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 the Congress and the Comptroller General for review.

### **Unfunded Mandates Reform Act**

For purposes of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), as well as Executive Order 12875, these rules do not include any Federal mandate that may result in expenditures by state, local, or tribal governments in the aggregate of more than \$100 million, or increased expenditures by the private sector of more than \$100 million.

### **Federalism Statement**

Executive Order 13132 (August 4, 1999) outlines fundamental principles of federalism and requires 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 the States, or on the distribution of power and responsibilities among the various levels of government. These rules do not have federalism implications because they would have 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 requirements implemented in these rules do not alter the fundamental provisions of the statute with respect to employee benefit plans, and as such would have no implications



for the States or the relationship or distribution of power between the national government and the States.