

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

A. Justification

1. *Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information*

Section 502(a)(1) of the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780, (PPA), which was enacted on August 17, 2006, amended the Employee Retirement Income Security Act of 1974, as amended (ERISA or the Act), by adding section 101(k). Section 101(k)(1) of ERISA requires that the administrator of a multiemployer plan, upon written request, furnish certain documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that may be requested are (A) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

Section 502(a)(3) of the PPA provides that the Secretary of Labor shall prescribe regulations under section 101(k)(2) not later than one year after the date of enactment of the PPA. Section 502(d) of the PPA provides that section 101(k) shall apply to plan years beginning after December 31, 2007.

This disclosure provision of ERISA was enacted, because more complete disclosures were considered an important element of measures enacted in PPA to strengthen the long-term health of the multiemployer pension plan system. Providing participants and beneficiaries, the labor organizations representing them, contributing employers, and PBGC with greater access to actuarial and financial information regarding their plans will increase the transparency of the operation of multiemployer pension plans and afford all parties interested in the financial viability of these plans greater opportunity to monitor their funding and financial status.

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2. *Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.*

The guidance provided in the final rule will be used by the administrators of multiemployer defined benefit pension plans to furnish actuarial and financial reports and amortization extension requests to plan participants and beneficiaries, employee representatives, and any employer that has an obligation to contribute to the plan. By clarifying certain terms used in section 101(k) of the Act, this regulation also will help multiemployer plan administrators to fulfill their disclosure responsibilities under this section with greater certainty. The increase in transparency of plan operations may also contribute to an atmosphere of greater accountability on the part of plan officials.

3. *Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration for using information technology to reduce burden.*

The information collection is a third-party disclosure. Respondents may determine the extent to which use of electronic methods of communication is appropriate pursuant to pertinent regulations at 29 CFR 2520.104b-1 concerning meeting EBSA's disclosure requirements through electronic media. The burden estimates in this supporting statement take projected levels of usage of electronic technologies into account.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The information required to be disclosed pursuant to section 101(k) of the Act and the final rule is maintained in the normal course of the business operations of multiemployer pension plans. The regulation permits respondents to satisfy the information collections with documents that are already in existence due to ordinary and customary business operations.

5. *If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I), describe any methods used to minimize burden.*

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While the regulation does not directly minimize the burden on small entities by its operation, the Department expects the burden on small entities will be minimal, because these entities should receive fewer requests for documents than larger entities. The Department expects small plans to have fewer investment managers, which should result in fewer financial reports to disclose. Data from the EBSA Private Pension Bulletin 2006 show that only 375 multiemployer pension plans or 12% of all multiemployer pension plans are small entities. The Department does not consider this to be a substantial number of small entities, and as part of the rule, for purposes of the Regulatory Flexibility Act, the Department certified that this rule is not likely to have a significant economic impact on a substantial number of small entities.

6. *Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.*

This information collection does not involve reporting to the Federal government, and as such, does not affect Federal programs.

7. *Explain any special circumstances that would cause an information collection to be conducted in a manner:*
 - *requiring respondents to report information to the agency more often than quarterly;*
 - *requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;*
 - *requiring respondents to submit more than an original and two copies of any document;*
 - *requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;*
 - *in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;*
 - *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*

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- *that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or*
- *requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.*

Not applicable.

8. *If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.*

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

The Department published a Notice of Proposed Rulemaking on multiemployer plan information available upon request in the Federal Register on September 14, 2007 (75 FR 52527), soliciting public comment on the information collections contained in the proposal and providing the public 60 days for comment consistent with the requirements of 5 CFR 1320.8. Two comments were received that specifically addressed the hour and cost burden of the rule. One commenter expressed concern that the proposal did not limit in any way requests for documents dating back indefinitely and that such requests could create severe administrative

burdens on plan administrators who might, for example, be required to search for documents from decades past.

Based on this comment, the Department modified the regulation to exclude from the documents required to be furnished under section 101(k) those reports and applications that have been in the plan's possession for 6 years or more as of the date on which the request was received by the plan. See paragraph (d)(2) of § 2520.101-6. Another commenter expressed concern that the administrative cost of the proposed rule may have been overstated because Internet disclosure will be frequent and cost efficient. In response to this comment, the Department noted in the final rule that no distribution costs for the notices have been included in this PRA analysis because plans can charge for the cost of furnishing paper documents and the cost of electronic distribution are nominal.

9. *Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.*

Not applicable.

10. *Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy.*

No assurance of confidentiality has been provided.

11. *Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.*

Not applicable.

12. *Provide estimates of the hour burden of the collection of information. The statement should:*

- *Indicate the number of respondents, frequency of response, annual hour burden,*

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and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- *If this request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.*
- *Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 14.*

Based on data derived exclusively from the Form 5500 for the 2006 plan year, which is the most recent year for which complete data are available, the Department estimates that there are 1,507 multiemployer defined benefit plans and 1,530 multiemployer defined contribution plans that would be subject to this disclosure requirement. Section 101(k) of the Act and the final rule generally did not limit the class of documents that can be requested in any way by date of creation or receipt. However, as explained in the preamble above, in response to comments received on the proposal, the final regulation limits a plan administrator's obligation with respect to aged documents. See § 2520.101-6(d)(2). Thus, for purposes of this regulatory impact analysis, the Department has assumed that plans would not respond to any requests for aged documents (i.e., documents in existing inventory that were received prior to the 2004 plan year), but that each multiemployer defined benefit and defined contribution pension plan will disclose both an existing inventory and newly created periodic actuarial reports ("actuarial reports"), quarterly, semiannual, or annual financial reports ("financial reports"), and amortization extension requests filed with the IRS ("extension requests").

For purposes of this analysis, the Department assumes that 40 percent of the existing documents would be requested in the year section 101(k) first became effective (2008), 30 percent in the second year (2009), 15 percent in the third year (2010), 10 percent in the fourth year (2011), and 5 percent in the fifth year (2012).¹ Although section 101(k) first became

¹ This assumption is based on the expectation that interest in receiving existing documents will be high in the

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effective for plan years beginning after December 31, 2007, the final rule is not itself effective until 30 days after its publication in the Federal Register (2010). Therefore, the PRA burden analysis only accounts for the hour and cost burden incurred during the year the final rule is effective and the following two years (2010-2012).

In developing burden estimates, the Department has taken into account the total estimated hours required to copy, mail, and redact reports eligible for disclosure. Redaction may be required to remove individually identifiable and proprietary information from certain reports.

With respect to an existing inventory of reports, the Department estimates that multiemployer defined benefit plans will receive 99,000² requests to disclose existing financial reports (an average of 66 per plan), 75,000 requests for existing actuarial reports (an average of 50 per plan), and 1,500 requests for existing extension requests (an average of one per plan), and defined contribution plans will receive 64,000 requests for existing financial reports (an average of 42 per plan). Therefore, the Department estimates that multiemployer pension plans will receive a total of 240,000 requests for disclosures of existing inventory of reports at some point over the first five years starting on the effective date of the statute.³

With respect to newly-created reports, the Department estimates that multiemployer defined benefit plans will receive 105,000 requests to disclose newly created financial reports (an average of 70 per plan), 32,000 requests for newly created actuarial reports (an average of 21 per plan), and 1,600 requests for newly created extension requests (an average of one per plan), and defined contribution plans will receive 92,000 requests for newly created financial reports (an average of 60 per plan). Therefore, the Department estimates that multiemployer pension plans would receive a total of 231,000 requests annually for disclosures of newly created reports.

The Department estimates that plans will receive 267,000 (231,000 + 36,000) total request for existing and newly created documents in 2010, 255,000 (231,000 + 24,000) in 2011, and 243,000 (231,000 + 12,000) in 2012. The three-year average estimated total requests reported in ROCIS is 255,000.

The Department estimates that the total hour burden associated with disclosing existing documents upon request over the three-year period (2010-2012) will be approximately 16,000

initial year of implementation and gradually decrease in subsequent years.

² All dollar or hour numbers in this burden analysis have been rounded to either the nearest thousand or the nearest hundred, as appropriate.

³ As stated above, the Department estimates that 15% of the requests (36,000) will be received in 2010, 10% (24,000) will be received in 2011, and 5% (12,000) will be received in 2012.

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hours.⁴ For purposes of this impact analysis only, this includes 15,000 clerical hours to log requests and to locate, copy, and mail paper disclosures⁵ and 1,200 legal hours (1.1 hours per plan for financial reports, .7 hours for actuarial reports, and 0 hours for extension requests)⁶ to redact individually identifiable and proprietary information.⁷ The equivalent costs of these hours are \$540,000.⁸

The Department estimates that the total hour burden associated with disclosing newly created documents upon request is 26,000 hours annually. This estimate includes 25,000 clerical hours to copy and mail paper disclosures and 1,300 legal hours to redact individually identifiable and proprietary information. The equivalent cost of these hours is estimated to be \$785,000.

Based on above, the total hour burden associated with the rule is 34,000 hours (26,000 + 8,200) in 2010 (26,000 + 8,200), 31,000 (26,000 + 5,400) in 2011, and 29,000 (26,000 + 2,700) in 2012. The three-year average estimated total hour burden reported in ROCIS is 32,000.

13. *Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 or 14).*

The main costs arising from this information collection derive from the direct costs of redacting individually identifiable and proprietary information from the reports. The Department assumes no additional costs for copying and mailing documents, because the final

⁴ 8,200 hours in 2010, 5,400 hours in 2011, and 2,700 hours in 2012.

⁵ This is the product of the total documents disclosed times the percentage of documents disclosed on paper times 15 minutes (to locate, copy, and mail paper documents).

⁶ The Department estimates that 70% of the requested documents will be redacted by outside legal counsel, and that 30% of financial reports and 25% of actuarial reports will require redaction.

⁷ The Department estimates that 20% of existing financial reports and actuarial reports for defined benefit plans will be available electronically, 50% of existing extension requests for such plans will be available electronically, and 20% of existing defined contribution plan financial reports will be available electronically. Documents are assumed to be disclosed on paper unless the requester has access to email and requests a document that already exists in paper form.

⁸ EBSA labor rate estimates are in 2009 Dollars and are based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index (June 2008, Bureau of Labor Statistics). Total labor costs (wages plus benefits plus overhead) for clerical staff were estimated to average \$26 per hour. Total labor cost for legal staff was estimated to average \$116 per hour based on wage estimates for attorneys.

rule, like the proposal, allows plans to charge requesters for the reasonable costs of furnishing documents in an amount that does not exceed the lesser of the actual cost to the plan to furnish the document, or 25 cents per page plus the cost of mailing or otherwise delivering the requested document.⁹

The estimated total costs to redact individually identifiable and proprietary information from the existing inventory of financial reports over the three-year period 2010-2012 are \$132,000¹⁰ and from the existing inventory of actuarial reports are \$82,000.¹¹ The Department estimates that no costs will be incurred for redacting information from the existing inventory of extension requests. For multiemployer defined contribution plans, estimated redaction costs for existing financial reports are \$134,000.¹² Therefore, the total redaction costs for the existing inventory of all reports are estimated to be \$348,000.¹³

The estimated annual costs of contract work¹⁴ to redact individually identifiable and proprietary information for newly-created financial reports would be \$146,000 and \$46,000 for newly created actuarial reports. The Department estimates that no costs will be incurred for redacting information from newly created extension requests. For multiemployer defined contribution plans, the annual redaction costs for newly created financial reports are estimated to be \$149,000. Therefore, the total annual redaction costs for all newly created reports are estimated to be \$341,000.

The total cost burden associated with the rule is \$515,000 (\$174,000 + \$341,000) in 2010, \$457,000 (\$116,000 + \$341,000) in 2011, and \$399,000 (\$58,000 + \$341,000) in 2012. The three-year average cost burden reported in ROCIS is \$457,000.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of*

⁹ One commenter expressed concern that the administrative cost of the proposed rule may have been overstated because Internet disclosure will be frequent and cost efficient. Please note that no distribution costs for the notices have been included in this PRA analysis, because plans can charge for the cost of furnishing paper documents and the nominal cost of electronic distribution.

¹⁰ \$66,000 in 2010, \$44,000 in 2011, and \$22,000 in 2012.

¹¹ \$41,000 in 2010, \$27,000 in 2011, and \$13,000 in 2012.

¹² \$67,000 in 2010, \$44,000 in 2011, and 22,000 in 2012.

¹³ \$174,000 in 2010, \$116,000 in 2011, and \$58,000 in 2012.

¹⁴ The Department has assumed that 70% of redaction work will be contracted .

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hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.

Not applicable.

15. *Explain the reasons for any program changes or adjustments reporting in Items 13 or 14 of the OMB Form 83-I.*

A reduction in burden occurred at the final rule stage due to a revision that was made to the final rule requiring disclosure of documents that are no older than six years old at that date of the request, measured for the date of the request or years preceding the year of the request. This revision was made in response to a public comment. Cost also are lower at the final rule state, because the rule no longer accounts for distribution cost due to the fact that ERISA section 1010(k) because the statute allows plans to charge requestors for reasonable copying and distribution costs.

The program change was necessitated by the enactment of Section 101(k) of the Employee Retirement Income Security Act (ERISA) which was added by section 502(a)(1) of the Pension Protection Act of 2006 (PPA). ERISA Section 101(k) requires the administrator of a multiemployer pension plan, upon written request, to furnish copies of certain actuarial and financial documents to any plan participant, beneficiary, employee representative, or any employer that has an obligation to contribute to the plan. The documents that are required to be furnished are: (A) a copy of any periodic actuarial report (including sensitivity testing) received by the plan for any plan year which has been in the plan's possession for at least 30 days; (B) a copy of any quarterly, semi-annual, or annual financial report prepared for the plan by any plan investment manager or advisor or other fiduciary which has been in the plan's possession for at least 30 days; and (C) a copy of any application filed with the Secretary of the Treasury requesting an extension under section 304 of the Act (or section 431(d) of the Internal Revenue Code of 1986) and the determination of such Secretary pursuant to such application.

PPA section 502(a)(3) required the Secretary of labor to prescribe rules under ERISA section 101(k).

16. *For collections of information whose results will be published, outline plans for tabulation, and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending*

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dates of the collection of information, completion of report, publication dates, and other actions.

There are no plans to publish the results of this collection of information.

17. *If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.*

The OMB expiration date will be published in the Federal Register following OMB approval.

18. *Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submission," of OMB 83-I.*

Not applicable; no exceptions to the certification statement.

B. Collections of Information Employing Statistical Methods

Not applicable. The use of statistical methods is not relevant to this collection of information.