

**Proposed Extension of Collection of Information for:
Alternative Compliance for Certain SEPs Pursuant to 29 CFR § 2520.104-49.
OMB Number 1210-0034
June 2008**

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

1. 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 110 of ERISA authorizes the Secretary to prescribe alternative methods of compliance with the reporting and disclosure requirements of Title I of the Employee Retirement Income Security Act of 1974 (ERISA) for pension plans. Simplified Employee Pensions (SEPs) are established in section 408(k) of the Internal Revenue Code of 1986 (the Code). Although SEPs are primarily a development of the Code subject to its requirements, SEPs are also pension plans subject to the reporting and disclosure requirements of Title I of ERISA.

The regulation containing the ICR (29 CFR 2520.104-49) was issued January 6, 1981, under the authority of section 110 of ERISA and intends to relieve sponsors of certain SEPs from ERISA's Title I reporting and disclosure requirements by prescribing an alternative method of compliance. These SEPs are, for purposes of this information collection, referred to as "non-model SEPs" because they exclude those SEPs which are created through use of Internal Revenue Service (IRS) Form 5305-SEP, and those SEPs in which the employer influences the employees as to their choice of IRAs to which employer contributions will be made, and that also prohibits withdrawals by participants. The disclosure requirements in this regulation were developed in conjunction with the IRS (IRS Notice 81-1). Accordingly, sponsors of non-model SEPs who satisfy the limited disclosure requirements of the regulation are relieved from otherwise applicable reporting and disclosure requirements under Title I of ERISA, including the requirements to file annual reports (Form 5500 Series) with the Department, and to furnish summary plan descriptions (SPDs) and summary annual reports (SARs) to participants and beneficiaries.

Code § 408(k) was amended pursuant to the Small Business Job Protection Act of 1996 (SBJPA) which repealed elective or salary reduction SEPs (SAR-SEPs). The SBJPA provides that employers cannot establish new SAR-SEPs for tax years beginning after December 31, 1996. However, SAR-SEPs established prior to January 1, 1997 can continue to receive contributions under present-law rules, and new employees of an employer with a pre-existing (prior to January 1, 1997) SAR-SEP hired after December 31, 1996 can participate in the SAR-SEP in accordance with such rules. The ICR applies, therefore, to on-going SAR-SEPs, new participants in these SAR-SEPs, and to current and new non-model SEPs and their participants. Because only a small number of

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SEPs are SAR-SEPs, all SEPs and SEP participants are referred to as non-model SEPs for purposes of this ICR.

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 alternative disclosure arrangement provided through this regulation relieves sponsors of non-model SEPs of most of the reporting and disclosure requirements under Title I of ERISA. Also, the disclosure requirements set forth in the regulation ensure that administrators of non-model SEPs provide participants with specific written information concerning SEPs. This information collection requirement generally requires timely written disclosure to employees eligible to participate in non-model SEPs, including specific information concerning: participation requirements; allocation formulas for employer contributions; designated contact persons for further information; and, for employer recommended IRAs, specific terms of the IRAs such as rates of return and any restrictions on withdrawals. Moreover, general information is required that provides a clear explanation of: the operation of the non-model SEP; participation requirements and any withdrawal restrictions; and the tax treatment of the SEP-related IRA. Furthermore, statements must be provided that inform participants of: any other IRAs under the non-model SEP other than that to which employer contributions are made; any options regarding rollovers and contributions to other IRAs; descriptions of IRS disclosure requirements to participants and information regarding social security integration (if applicable); and timely notification of any amendments to the terms of the non-model SEP.

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.*

Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific

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safeguards.

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 disclosure requirement set forth in this regulation is not duplicated in any other Federal statute or regulation. Also, this disclosure requirement is the only method of insuring that administrators of non-model SEPs provide participating employees with specific written information concerning SEPs.

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.*

The alternative disclosure arrangement provided through this regulation is an effort on the part of the Department to assure that small businesses receive the most extensive relief consistent with ERISA. This regulation will minimize the impact of existing reporting and disclosure requirements on these businesses.

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 is not applicable because this information is not collected by the Federal government.

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;*

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- *requiring the use of a statistical data classification that has not been reviewed and approved by OMB;*
- *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.*

There are no special circumstances that require the collection to be conducted in a manner inconsistent with the above.

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.

Attached is a copy of the Department's notice for the Federal Register, as required by 5 CFR 1320.8(d), soliciting comments on the information collection. This notice was published in the Federal Register on April 2, 2008 (73 FR 18003), providing the public 60 days to comment on the submission. No comments were received.

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

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No payments or gifts are provided to respondents.

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

The information collection is a third-party disclosure and as such is not intended to be confidential.

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.*

There are no questions of a sensitive nature pertaining to sexual behavior and attitudes, religious beliefs, or other matters that are commonly considered private.

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, 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.*

The Department estimates the total annual hours burden required to complete this disclosure is 21,227. Every SEP must prepare a disclosure and distribute copies of the

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disclosure to its participants. The Department assumes that the employer will perform these services themselves, so this work will be measured in burden hours. The cost of materials, copying, and postage is presented in Item 13.

For the paper work renewal in 2005, the Securities Industry Association (SIA) provided the Department with the results of an informal survey of a number of their members, regarding the number of SEP accounts, and the number of participants in those accounts. The data provided by SIA indicates that in 2004, there were approximately 356,600 employers sponsoring non-model SEPs, and approximately 679,300 participants in those SEPs. No update of this information is available.

Since the alternate method of compliance, which is the subject of this ICR, has been in effect for nearly 25 years, the Department believes that the most SEP sponsors have already compiled the disclosures that they are required to distribute to plan participants. The Department estimates that each disclosure statement takes 30 minutes to prepare, and will only be prepared by administrators of new SEPs. The Department does not collect information regarding the number of new SEPs, and has estimated that about 36,000 new SEP plans are created each year. The total preparation burden is estimated to be 18,000 hours ($35,660 \times 1/2 \text{ hour} = 17,830$).

The Department estimates that each year, there are approximately 68,000 new SEP participants who must receive a disclosure statement. The Department estimates that it takes 3 minutes per participant to distribute the disclosure statements. The distribution burden is estimated to be 3,400 hours ($67,930 \text{ participants} \times 1/20 \text{ hour} = 3,397$).

The total hour burden to prepare and distribute the disclosures is estimated to be about 21,000 hours.

The cost of the hour burden would be approximately \$ 1,500,000¹. The Department assumes that the preparation would be done by a professional at \$79/hour, for a total of \$1,400,000 ($17,830 \text{ hours} \times \$79/\text{hour} = 1,408,570$). The Department assumes that the distribution would be done by a clerical staff member at \$25/hour, for a total of about \$85,000 ($3,397 \text{ hours} \times \$25/\text{hour} = \$84,913$).

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).*

¹ Total compensation estimates are based on the National Occupational Employment Survey (May 2006, Bureau of Labor Statistics) and the Employment Cost Index (March, 2007, Bureau of Labor Statistics), as well as overhead assumptions by EBSA.

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The total cost burden results from paper, copying and mailing costs. The Department estimates that each disclosure costs \$0.05 for copying and paper and \$0.42 to mail for an annual total of \$32,000 (67,930 disclosures x (\$0.42 + \$0.05)).

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 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.*

There is no reporting to the Federal government and consequently no cost to the government.

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

Changes in the costs reflects increase in postal rates as well as the inclusion of paper costs.

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

This is not a collection of information for statistical use.

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 collection of information will display a currently valid OMB control number.

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.