

SUPPORTING STATEMENT FOR PAPERWORK REDUCTION ACT 1995 SUBMISSIONS

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.*

The subject information collection requirements arise from section 101(e) of the Employee Retirement Income Security Act of 1974 (ERISA), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under the conditions set forth in section 420 of the Internal Revenue Code of 1986, as amended (Code).

The notice requirements of section 101(e) are two-fold. First, subsection (e)(1) requires plan administrators to provide advance written notification of such transfers to participants and beneficiaries. Second, subsection (e)(2)(A) requires employers to provide advance written notification of such transfers to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least 60 days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further give the Secretary of Labor the authority to prescribe how notice to participants and beneficiaries must be given and any additional reporting requirements deemed necessary.

Although the Department of Labor has not issued regulations under section 101(e), on May 8, 1991, the Department published ERISA Technical Release 91-1, to provide guidance on how to satisfy the notice requirements prescribed by this section. (An advance copy of the Technical Release appeared in the Federal Register on March 14, 1991, at 56 FR 109271.)

The Technical Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. Second, it simplified the statutory filing requirements by providing that filing with the Department of Labor would be deemed sufficient notice to both the Department and the Department of the Treasury as required under the statute.

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 information collection involves third-party disclosures and reporting to the federal government. First, information must be disclosed to plan participants and beneficiaries by plan administrators. This requirement is designed to protect the rights of participants and beneficiaries in their retirement benefits by providing them with advance notice of any anticipated transfer of defined benefit plan assets (under section 420 of the Code). Second, advance notification must also be provided by employers to plan administrators, employee organizations that represent participants, and the Department. Plan administrators and employee organizations have an interest in protecting the interests of plan participants and beneficiaries in their retirement benefits. The Department also has the duty to enforce the protections provided to participants and beneficiaries under ERISA. These notice requirements are statutorily mandated by ERISA section 101(e).

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.*

Pursuant to the Department's regulation at 29 CFR 2520.104b-1, which applies to all disclosures required to be made to participants and beneficiaries of ERISA-covered plans, plan administrators may use electronic means of communications that meet the regulatory standards to provide the notice required by section 101(e)(1). The Technical Release does not prohibit use of electronic communications media for distribution of the notice required under section 101(e)(2)(A) to other third parties, such as employee organizations or plan administrators, and EBSA encourages plan administrators and employee organizations to accept notifications from employers electronically, subject to resolution by these parties of any legal issues that may arise

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information to or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of any legal issues, EBSA will accept electronic transmission of the notice to the Department required by this information collection.

For purposes of this estimation, as explained further below, the Department has assumed, based on its experience generally, that 50 percent of notices to participants and beneficiaries are currently provided electronically. This rate of use of electronic means of communication has risen over time, and the Department expects it will continue to rise as advances in technology make these media simpler and less expensive.

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 Technical Release does not impose any duplication of effort. The Department is not aware of any similar information collection imposed under Title I of ERISA or otherwise under federal law. The Department has eliminated the duplication inherent in the statutory provision by permitting a single notification to suffice as notice to both the Department and the Department of the Treasury.

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 collection of information required by section 101(e) affects small and large businesses and plans equally. The statutory requirement itself does not differentiate between large and small entities. In issuing Technical Release 91-1, the Department determined that these notifications would be as important to participants and beneficiaries in small plans as they would be to those in large plans and therefore chose not to provide different rules for small entities. The information collections apply only when a plan sponsor-employer itself chooses to transfer excess assets as permitted under Code section 420. The Technical Release reduces the compliance burden for both small and large plans and employers by deeming a single notification satisfactory for the filing requirements for both Departments.

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.*

The notice requirements described in the Technical Release apply only if a defined benefit pension plan sponsor decides to transfer assets from a defined benefit pension plan to a retiree health benefit account. The frequency of such notification is dependent on the occurrence of a transaction, not on a regular or predetermined period or on a period imposed by the agency. Failure to provide the required notices would affect the ability of a variety of entities, including plan administrators, employee organizations, and the Department, to protect the interests of the affected plan participants and beneficiaries.

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;*
- *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 would cause the collection to be conducted in a manner described 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.*

The Department's published the notice required by 5 CFR 1320.8(d) soliciting comments on the information collection in the Federal Register on November 21, 2008 (73 FR 70677). The public was provided with 60 days to comment on the submission, and no comments were received.

In finalizing this Technical Release, the Departments of Labor and Treasury collaborated to simplify the notice requirements of ERISA section 101(e)(2) by agreeing to permit the filing of one notice with the Department of Labor to satisfy the requirement to notify both Departments.

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

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.*

There is no assurance of confidentiality attached to this information collection. The statute that imposes the information collection provides no assurance of confidentiality to respondents. Section 101(e)(2)(A) provides that a copy of the plan sponsor's notice must be made available for inspection in its principal office; the Department also makes the notices it receives available for public inspection.

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.*

The information collection does not present any 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, based on the average number of 101(e) notices received annually by the Department from 2005 through 2007, that on average 15 defined benefit pension plan sponsors will transfer plan assets from pension plans with an average of 107,000 participants and beneficiaries to retiree health benefit accounts during each of the next three years. Because this information collection imposes two separate notice requirements, one on the plan sponsor and one on the plan administrator, the Department has estimated that the information collection will affect a total of 30 respondents annually. In addition to the 107,000 participants and beneficiaries who are estimated annually to receive notices, this estimate assumes that for each asset transfer a notice will be sent to the Department, to the plan administrator (by the plan sponsor) and to one employee organization, for a total annual estimate of 107,045 responses.

The Department further assumes that these plan sponsors and plan administrators will use in-house resources, specifically professional (non-lawyer) and clerical staff, to prepare and distribute the two notices required under section 101(e) in-house. The paperwork burden for the preparation and distributions of the two notices is therefore described in this answer as an hour burden; the additional costs attributable to the information collection is described in the answer to question 13, below, as a cost burden.

*Preparation of Notices.* The Department assumes that drafting the “model” for each of the two notices (the employer’s notice to the Department et al. and the plan administrator’s notice to

participants and beneficiaries) for each plan asset transfer will require one hour of professional time devoted largely to the collection and integration of the different sets of information necessary for each of the two notices.

In addition to drafting time, preparation of the plan administrator's notices to participants and beneficiaries will require individualization of the model to reflect the specified accrued benefits of each participant and beneficiary to whom the notice must be provided. The Department has assumed that this individualization will require 30 minutes of clerical time for each asset transfer. The time will be used to insert individual-specific benefit information appropriately into the already prepared notice. The Department assumes that this information will already reside in an existing electronic database and that the actual insertion of information will be done automatically by the appropriate database and word processing software. The employer's notice, which goes to the Department, the plan administrator, and any employee organization representing employees of the plan sponsor, is estimated to need 20 minutes of additional clerical preparation time, since the addressees of these notices are not assumed to be part of an existing database and the additional 20 minutes are assumed necessary to produce individualized copies of the model addressed to each of these parties. Total preparation time for the notices, therefore, is estimated at 43 hours.<sup>1</sup> The equivalent cost of this part of the hour burden, with non-lawyer professional time valued at \$62/hour and clerical time at \$26/hour is \$2,180.<sup>2</sup>

*Distribution of Notices.* The Department assumes that 50 percent of the plan administrator's notices will be distributed to participants and beneficiaries by electronic means. This estimate is based on the current experience and understanding of the Department's program analysts of the degree to which employers have generally adopted electronic means of communication, pursuant to the Department's regulation at 29 CFR 2520.104b-1, to provide such notices. Because of the nature of electronic communications systems, the Department believes that electronic distribution adds virtually no additional time, and the Department therefore has not attributed any additional burden hours for distribution of those notices. For the remaining 50 percent of such notices, and for all of the plan sponsor's notices, the Department estimates that the tasks of copying and mailing will require 2 minutes of clerical time per notice. Using as a basis the average number of participants and beneficiaries in the plans for which the Department received section 101(e) notices during the years 2005 to 2007, the Department estimates that 107,000 plan administrator's notices will be sent annually. The Department has estimated that, for each asset transfer, three plan sponsor's notices will be sent: one to the Department, one to the plan

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<sup>1</sup> This total is derived as follows: 1 hour professional time x 2 notices x 15 asset transfers = 30 hours (professional preparation time). 30 min. clerical time x 1 notice x 15 asset transfers = 7.5 hours (individual notices). 20 min. clerical time x 1 notice x 15 asset transfers = 5 hours (DOL, etc. notices). 30 + 7.5 + 5 = 42.5 total annual hour burden for preparation.

<sup>2</sup> EBSA estimates based on the National Occupational Employment Survey (May 2007, Bureau of Labor Statistics) and the Employment Cost Index June 2008, Bureau of Labor Statistics.

administrator, and one to an employee organization. For the annual distribution of the estimated 107,000 notices, the Department estimates an additional total annual hour burden of 1,784 hours of clerical time.<sup>3</sup> The equivalent cost of this part of the hour burden is estimated at \$46,440 (1,784 hours x \$26/hour).

Based on the above-described estimates, the total annual hour burden for this information collection is estimated at 1,830 hours. The cost equivalent of the hour burden is \$48,620.

*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).*

As explained in the answer to question 12, the Department has assumed that all work to prepare and distribute notices will be done in-house by the respondents. The paperwork burden of those activities is therefore accounted for as hour burden. The additional costs that will be paid by respondents to satisfy this information collection, which consist of paper copying and mailing costs, are described here.

This estimate assumes that 50 percent of the plan administrator's notices will be provided to participants and beneficiaries electronically. Because the respondents will utilize pre-existing electronic communications systems and e-mail lists, the Department has assumed that the additional costs of distributing the notices will be so small as to be insignificant. No additional cost has been estimated for electronic distribution. For the remaining 50 percent of these notices, the Department has assumed a mailing cost of \$0.47 per notice (\$0.42 postage, \$0.05 material and printing costs), for a total annual cost of \$25,145 to mail an estimated 53,500 notices. The use of electronic means of distribution, therefore, represents an estimated annual cost savings of \$25,145.

The Department has assumed, based on current practices, that none of the plan sponsor's notices will be sent electronically and that all of these notices, to the Department, plan administrators and employee organizations, will be sent by some form of certified mail. Accordingly, the Department has estimated a cost of \$3 per notice. Therefore, the annual cost burden of distributing the plan sponsor's notices is estimated at \$143.

Based on these estimates, the total annual cost burden of this information collection is \$25,290.

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<sup>3</sup> This total is derived as follows: (107,000 plan administrator's notices + 3 plan sponsor's notices x 15 asset transfers) x 2 min x 50%. = 1,783.75 hours.



*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.*

We continue to estimate that the cost to the federal government of this information collection is minimal, consisting only of the clerical time needed to receive and file an average of 15 notices per year.

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

The Department has revised its estimate, as compared to the 2006 submission, to reflect current experience regarding the frequency of asset transfers under section 101(e) of ERISA and section 420 of the Code. More recent data suggest a reduction in the number of such asset transfers. The resulting paperwork burden estimate presents a more accurate, up-to-date picture of the impact of this information collection.

*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 and there are no plans to publish the results of this collection.

*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.

## **B. Collections of Information Employing Statistical Methods**

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