

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 1460 of the Small Business Job Protection Act of 1996 (Pub. L. 104-188) (SBJPA) amended ERISA by adding a new section 401(c). This new section, inter alia, required the Department to promulgate a regulation providing guidance, applicable only to insurance policies issued on or before December 31, 1998, to or for the benefit of employee benefit plans, to clarify the extent to which assets held in an insurer's general account under such contracts are "plan assets" within the meaning of the Employee Retirement Income Security Act (ERISA), because the policies are not "guaranteed benefit policies" within the meaning of section 401(b) of ERISA. SBJPA further directed the Department to set standards for how insurers should manage the specified insurance policies (called Transition Policies). Pursuant to the authority and direction given under SBJPA, the Department promulgated a regulation, issued in final form on January 5, 2000 (65 FR 714), and codified at 29 CFR 2550.401c-1. This regulation has not been amended subsequently.

Regulation section 29 CFR 2550.401c-1 imposes specific requirements on insurers that are parties to Transition Policies in order to ensure that the fiduciaries acting on behalf of plans have adequate information and understanding of how the Transition Policies work. Certain of these requirements constitute information collections. Specifically, an insurer that issues and maintains a Transition Policy to or for the benefit of an employee benefit plan must disclose to the plan fiduciary, initially upon issuance of the Policy and on an annual basis, to the extent that the policy is not a guaranteed benefit policy: (1) the methods by which income and expenses of the insurer's general account are allocated to the policy, the actual annual return to the plan, and other pertinent information; (2) the extent to which alternative arrangements supported by the assets of the insurer's separate accounts are available; (3) any rights under the policy to transfer funds to a separate account and the terms governing such right; and (4) the extent to which support by assets of the insurer's separate accounts might pose differing risks to the plan. Because the regulation applies only to policies that were first issued on or before December 31, 1998, the regulation required the initial disclosures for the existing Transition Policies to be made not later than 18 months following January 5, 2000. The current ICR pertains only to the ongoing annual information collections.

The regulation was promulgated in response to specific Congressional directives, which included the specific information collections contained in the regulation's disclosure requirements.

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 required information disclosure provides plan fiduciaries with information necessary to adequately assess the financial strength of the insurer, the continuing suitability of a particular policy/investment for the plan, and the appropriateness of continuing a plan's investment in such a policy. The information assists policyholders that are employee benefit plans in making future decisions about the continuing investment of plan funds in the insurer's general account.

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.*

Nothing in the regulation requires that the disclosures be made through distributions of paper or by specific methods that would preclude electronic transmissions. Accordingly, the collection of this information may be satisfied electronically if the insurance company that issues the Transition Policy maintains the documents electronically and the employee benefit plans to which the disclosures must be made are able to receive the documents electronically. In recognition of the increasing ease and prevalence of electronic communications, the Department estimates conservatively that 50 percent of the required annual disclosures will be provided electronically by insurers to policyholders, with negligible cost to the insurers.

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 Department has attempted, to the extent possible, to reduce duplication of the collection requirements by permitting materials generated for other purposes to be used to satisfy the information collection requirements of the regulations. For example, in developing the regulations, the Department reviewed the disclosure requirements imposed by New York state insurance regulations and modeled the regulation's requirements to parallel state disclosure requirements to the extent the state requirements would suffice for plan fiduciaries under the Congressional directives.

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 information collection is unlikely to adversely affect small entities, since the

Transition Policies typically are issued and maintained by large insurers. Further, the Department believes that even if small insurers may be parties to Transition Policies, plans have as great a need for the required information from such small insurers as they do from large insurers. To the extent that insurers issuing policies to plans are viewed as “small entities,” the Department notes that the decision whether to issue and maintain a Transition Policy is voluntary and that insurers that choose to provide such products should uniformly be required to provide the necessary information to plans that may purchase such products, regardless of whether the insurer is considered a large or a small entity.

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 collection of information assists the insurance industry in complying with ERISA as amended by the SBJPA and protects participants and beneficiaries covered by employee benefit plans by ensuring that plan fiduciaries have adequate information about the insurance policies with which Congress was concerned. Congress expressly required the Secretary to promulgate regulations in connection with Transition Policies, including the specific provisions that give rise to the information collection.

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

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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

- o 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 require the collection to be conducted in any manner described above.

8. *If applicable, provide a copy and identify the data 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 70676). The public was provided with 60 days to comment on the submission, and no comments were received.

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.*

The regulation requires that insurers make certain disclosures to plans respecting specific types of insurance policies. No assurance of confidentiality is provided to respondents.

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 or 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:*
 - o *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.*
 - o *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.*
 - o *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 13.*

The regulation affects insurance companies that on or before December 31, 1998, issued and now currently maintain Transition Policies that were first issued on or before December 31, 1998. For each such currently existing Transition Policy, insurance companies are required to make certain annual disclosures. Insurers are required to disclose annually to each policyholder certain financial information including income and expense statements, benefits paid,

guarantees, a good faith estimate of a lump sum amount, and the insurer's obligation to furnish to the policyholder additional publicly available financial data.

It is expected that insurers will complete this task themselves rather than purchase services to do so. The Department estimates that preparation of the information required for the annual disclosure will require an estimated 3.75 hours per policy.¹ Based on the 2006 Form 5500 data, approximately 104 insurance companies currently provide such policies to an estimated 96,000 policyholders. The Department therefore estimates a total of 361,000 (96,000*3.75) burden hours will be required to create the annual disclosure statement.

The Department has also assumed that the annual disclosure statement will be distributed to policyholders as part of the routine distribution of plan materials, which would include, for example, the data required by employee benefit plans to complete Schedule A of the Form 5500. Because no separate mailing is anticipated, the additional burden for distribution is expected to be 1/2 hour per policy. Thus, the total aggregate burden hours for annual disclosures are estimated to be 409,000 hours (361,000 + 48,000).

Data from the Bureau of Labor Statistics indicates that the hourly labor costs for professional staff required to produce the annual disclosure statements has increased to \$113 per hour. Similarly hourly labor costs for administrative, office and support staff are estimated by BLS to be \$26 per hour.² Consequently, the equivalent costs of the total hour burden for the preparation of the annual notice is: \$41.9 million (\$40.7 million [361,000 * \$113] + \$1.3 million [48,000 * \$26]).

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 and 14).*

The Department believes that insurers will include the required information, as a free-standing separate document. For the estimated 50 percent of the required disclosures that are provided electronically, the insurers will incur negligible cost. The cost burden for the remaining 50 percent of disclosures (48,000 mailings) is estimated at 67 cents per mailing. This per mailing cost includes 42 cents for first-class postage and 25 cents for paper and material costs (5 pages at 5 cents a page printing and material cost). The total cost burden is \$32,000.

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*

¹ This hour estimate is derived from cost data provided by six insurance companies contacted in connection with the initial ICR. The average annual cost then reported for the six companies was \$283 per policy. Since professional time to prepare the initial notice was estimated at \$75 per hour, 3.75 hours per notice was therefore needed for each notice (\$283 total cost/\$75 cost per hour).

² 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)

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 are no annualized costs to the Federal government for this information collection.

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

The hour and cost burdens reported in Items 13 have been adjusted based on updated information about the numbers of existing Transition Policies, an increase in the hourly labor rate clarification of the assumptions for time required, the increased likelihood that respondents will use electronic forms of transmission, the inclusion of paper costs, and an increase in first class postage rates. This adjustment results in lower hour burden and increased cost burden for the information collection compared to the Department's prior submission.

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.*

The results of this collection of information will not be published.

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.*

There are 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.