

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.*

The Employee Retirement Income Security Act of 1974 (ERISA) contains three separate sets of provisions – in Title I (Labor provisions, Title II (Internal Revenue Code provisions), and Title IV (Pension Benefit Guaranty Corporation provisions) -- requiring administrators of employee benefit pension and welfare plans (collectively referred to as employee benefit plans) to file returns or reports annually with the federal government.

Since enactment of ERISA, the Pension Benefit Guaranty Corporation (PBGC), the Internal Revenue Service (IRS), and the Department of Labor (DOL) (collectively, the Agencies) have worked together (under DOL's leadership) to produce the Form 5500 Annual Return/Report, through which the regulated public can satisfy the combined reporting/filing requirements applicable to employee benefit plans. On July 21, 2006, the Agencies published a notice of proposed forms revisions (July 2006 Proposal) proposing changes to the Form 5500 Annual Return/Report for the 2008 reporting year. 71 FR 41615. On that same day, DOL published a proposed rule that would make amendments necessary to conform DOL's annual reporting and disclosure regulations to proposed revisions to the Form 5500 Annual Return/Report described in the July 2006 Proposal. 71 FR 41392. On December 11, 2006, the Agencies published a Notice of Supplemental Proposed Forms Revisions (Supplemental Notice). The Supplemental Notice was necessary to make changes to the Form 5500 Annual Return/Report required by the Pension Protection Act of 2006, Pub. L. 109-280, 120 Stat. 780 (2006), enacted on August 17, 2006 (PPA). 71 FR 71562. DOL also published a final rule requiring electronic filing of the Form 5500 Annual Return/Report for reporting years beginning January 1, 2008 (Electronic Filing Rule). 71 FR 41359 (July 21, 2006).

These Agencies have now adopted revisions to the Form 5500 Annual Return/Report, including the establishment of a new Form 5500-SF (Short Form 5500) for certain small plans, in order to update and streamline the annual reporting process in conjunction with establishing a wholly electronic processing system for receipt of the Form 5500 Annual Return/Reports and to conform the forms to the PPA. The final rule, which is being published contemporaneously with the revisions, includes an amendment to this Electronic Filing Rule. Specifically, that final rule amends DOL's regulation at 29 CFR § 2520.104a-2 to provide that the electronic filing requirement is applicable only for plan years beginning on or after January 1, 2009. Copies of the Forms Revisions, which is a three-agency action, and DOL's Notice of Rulemaking to amend DOL's reporting regulations are attached.

The proposed changes will alter the paperwork burdens imposed by the Form 5500 Annual Return/Reports, and this ICR requests three-year approval of PBGC's revised burden estimates, described below.

The form 5500 package has been submitted to OMB by DOL.

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 Form 5500 return/reports are the principal source of information and data available to the Agencies concerning the operations of employee benefit plans. For this reason, the Form 5500 constitutes an integral part of the Agencies' enforcement, research, and policy formulation programs. The annual report also provides a means by which the Agencies can effectively and efficiently identify actual and potential violations of ERISA, thereby minimizing the Agencies' investigatory contacts with the vast majority of plans, and enabling the Agencies to make the best use of their limited resources. The annual report also provides a fundamental tool for investigators in reviewing the operations and activities of employee benefit plans and identifying potential violations of the statute and regulations. Furthermore, public disclosure of the annual reports is intended to serve as a deterrent to non-compliance with the statutory duties imposed on plan fiduciaries.

With regard to research and policy formulation, the Form 5500 represents the primary source of data available to federal agencies, Congress, and the private sector for the development and implementation of national pension.

In addition to providing the Agencies with important enforcement, research, and policy information data, the Form 5500 represents the only source of detailed financial information available to plan participants and beneficiaries who, upon written request, must be furnished a copy of the plan's latest annual report by the plan administrator (ERISA section 104(b)(1)(B)(4)). Moreover, the annual report serves as the basis for the summary annual report, which administrators are generally required to furnish to each participant and beneficiary annually, except as provided in the PPA for defined benefit pension plans for plan years beginning after December 31, 2007.

There are about 800,000 pension and welfare benefit plans that must file the Form 5500 under Title I and IV of ERISA and the Code. These plans cover an estimated 150 million participants and hold an estimated \$4.3 trillion in assets. The annual report/reports are therefore important tools for protecting the benefits of American workers. (Note that PBGC's portion of the information collection applies to only a small subset of the 800,000 pension and welfare plans, because, except in rare cases, the PBGC's insurance program does not apply to welfare plans or

defined contribution plans. The PBGC estimates that there are approximately 30,300 defined benefit plans required to file pursuant to Title IV of ERISA.)

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 Agencies currently use an automated processing system, the ERISA Filing Acceptance System, or EFAST, to process the Form 5500 filings. EFAST was designed and is operated under the direction and control of DOL. When it was adopted in 1999, it simplified and expedited the receipt and processing of the Form 5500 by relying on computer scannable forms and electronic filing technologies. DOL is currently involved in a contract procurement process for the development of a new wholly electronic filing and processing system to replace EFAST.

In connection with replacing EFAST with a wholly electronic filing system, DOL has published a final rule in July 2006 (71 FR 41359) that established an electronic filing requirement for the Form 5500 Annual Return/Report. DOL is now publishing final amendments to the reporting regulations under Title I of ERISA in order to facilitate the transition to electronic filing, simultaneously with the three-agency publication of final forms revisions. Once the new system is operative, all Form 5500 Annual Return/Reports will be filed electronically. The proposed forms revisions and amendments to the reporting regulations are intended to streamline the return/report, facilitate the transition to wholly electronic processing, and reduce the burden on plans that file the Form 5500 Annual Return/Report, in connection with the transition to electronic filing. DOL believes that, once filers have made the transition to electronic filing, the combined effect of the new processing system and the revised Form 5500 return/reports will substantially lessen the paperwork burden imposed by the reporting requirements that are the basis for this information collection.

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 Agencies have developed and use a consolidated annual report that allows filers to satisfy the information collection requirements of all three agencies through a single filing, without duplication of effort or information collection. This eliminates the duplicative reporting that would otherwise result from application of the statutory provisions as written. In addition, while certain information concerning assets (including employee benefit plan assets) held by banks, insurance companies and other investment entities may be separately reported to state and Federal regulatory authorities, those reports are not structured to provide meaningful information

about those assets specifically attributable to any employee benefit plan, or to employee benefit plan investors as a group distinct from other types of investors. Therefore, there is no similar information gathered or maintained by any state or Federal agency or other source that the Agencies would consider adequate for effectively monitoring the activities of employee benefit plans.

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.*

Not applicable. The PBGC portion of the information collection will not have a significant impact on a substantial number of small agencies. See also DOL's supporting statement for a description of provisions in Title I of ERISA that permit the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

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.*

ERISA and the Code specifically require the filing of reports or returns by employee benefit plans on an annual basis. A less frequent information collection could contravene statutory requirements and would also impair and inhibit the administration and enforcement of the statute by the Agencies.

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.*

None.

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 are copies of the July 2006 Proposal and the Supplemental Notice, which were both promulgated jointly by the Agencies. These two documents, in addition to requesting public comment on the proposed changes to the Form 5500 Series, informed the public that the PBGC intended to seek OMB review and approval of the forms revisions and solicited public comment on the collection of information including burden estimates. Each document provided the public with 60 days for that purpose, as required by 5 CFR 1320.8(d).

Thirty-eight comment letters were received on the July 2006 Proposal from representatives of employers, plans, and plan service providers.<sup>1</sup> Seven comments were received on the Supplemental Notice. An extensive discussion of the comments can be found in the Notice of Adoption of Forms Revisions. In addition, copies of the comments are posted on the DOL's Web site at [www.dol.gov/ebsa/regs](http://www.dol.gov/ebsa/regs).

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<sup>1</sup> DOL also received a comment letter from the United States Department of Commerce, Economic and Statistics Administration, Bureau of Economic Analysis (BEA), indicating that the BEA relies on the information collected in the Form 5500 to prepare certain statistics.

Although no public comments were received that specifically addressed the paperwork burden analysis of the information collections, the comments that were submitted in response to the July 2006 Proposal and the Supplemental Notice contained information relevant to the costs and administrative burdens attendant to the proposals. The Agencies took into account such public comments in connection with making changes to the proposals, analyzing the economic impact of the proposals, and developing the revised paperwork burden analysis. Changes to the paperwork burden of the Form 5500 and most schedules were made.

The Notice of Adoption of Revisions to Annual Information Return/Report Forms, which is being promulgated jointly by the three Agencies, and the Notice of Final Rulemaking relating to amendments to the Annual Reporting and Disclosure Rules, which is promulgated by DOL, are scheduled to be published in the Federal Register shortly after OMB approves the two documents for publication

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 Form 5500 filings made under Title I of ERISA are required by law to be made available for public inspection at DOL and at the offices of the plan administrators. Accordingly, DOL and PBGC provide no assurance of confidentiality 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.*

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, 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 13.*

Because the Form 5500 Series combines the information collection requests of three federal agencies (DOL, the IRS, and the PBGC) into a single return/report, each of the Agencies submits its own ICR and maintains its own OMB approval for the portion of the paperwork burden arising out of the Form 5500 Series that pertains to its own information collections. However, since 1999, the Agencies have adopted a unified approach and methodology for estimating paperwork burden, which is conducted by DOL with input from PBGC and the IRS. This ICR requests approval of only the portion of the total paperwork burden of the Form 5500 Series that is attributed to PBGC, although it includes some information on the other portions of the total paperwork burden. PBGC has been advised by DOL and the IRS that they intend to submit separate requests for OMB review in connection with the final forms revisions. The discussion below, therefore, describes the unified methodology underlying the Agencies' estimates of the aggregate burden imposed by the proposed forms revisions as a whole, but requests approval only of PBGC's portion of that burden.

Based on data derived from the 2003 Form 5500 filings (the most recent accurate information available) it is estimated that a total of 780,000 respondents will file annual reports under these regulations, using the Form 5500 Annual Return/Report.<sup>2</sup> As noted above, PBGC's portion of the information collection applies only to a small subset of these 780,000 respondents, i.e., approximately 30,300 defined benefit plans required to file pursuant to Title IV of ERISA. As discussed in the Notice of Forms Revisions, changes to the Form 5500 will be introduced for 2007, 2008, and 2009.

The paperwork burden allocated to the PBGC includes a portion of the general instructions,

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<sup>2</sup> All numbers in this supporting statement are rounded to the nearest 1,000.

basic plan identification information, a portion of Schedule MB and Schedule SB, and a portion of Schedule R. The PBGC's estimated share of the total annual paperwork burden for the Form 5500 Series is 1,800 hours and \$1.6 million for plan year 2007, 2,000 hours and \$1.8 million for 2008, and 1,200 hours and \$1.3 million for 2009.<sup>3</sup>

A detailed description of the basis for all the burden estimates and determinations (including those for DOL and the IRS) is included in the supporting statement submitted by DOL. The aggregate and attributed hour burdens each reflect an allocation of the overall burden between service providers hired by plans and plans that are expected to complete the return/report through use of in-house resources, rather than by purchase of services from third party service providers.

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

The total annual cost burdens attributable to PBGC for the information collection requirements of the Form 5500 Return/Report, derived as described in the answer to item 12, above, and as shown in that answer, are estimated at \$1.6 million for plan year 2007, \$1.8 million for 2008, and \$1.3 million for 2009.

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.*

The annual processing cost for all Form 5500 filings for 2005 is estimated at \$18.9 million (including oversight), in accordance with the terms of the EFAST vendor contracts. Of that amount, \$400,000 is paid by PBGC. Costs that would be imposed by a new all-electronic filing system cannot be accurately estimated at this time because such a system is still in development.

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

PBGC is submitting paperwork numbers for approval to OMB for the three-year renewal period.

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<sup>3</sup> Some numbers do not sum up to the totals due to rounding. The estimate of the sponsor wage rate is based on the National Occupational Employment Survey (May 2005, Bureau of Labor Statistics) and the Employment Cost Index (Sept. 2006, Bureau of Labor Statistics) and projected to 2009.

The program changes to the plan year 2007, 2008, and 2009 Form 5500 are discussed in the Forms Revisions, the Notice of Rulemaking, and in this supporting statement. In 2008, DOL intends to file non-substantive and non-material modification for the 2008 Forms (and in 2009 for the 2009 Forms), as long as there are no additional program changes.

The hour and cost burden estimates in this ICR show a decrease from the prior submission. The changes in estimates are attributable to program changes and to model changes. OMB approved in 2004 an hour burden of 2,373 hours and costs of \$1,737,000 for PBGC. For the three year period beginning with 2007, the estimated average hour burden is reduced to 1,667 hours and the estimated average cost burden is reduced to \$1,567,000. The methodology and assumptions described in the answer to item 12, above, are similar to previous methods. However, based on experience from the agencies, the model has been updated to more accurately reflect current practices.

Some of the program changes are anticipated to reduce paperwork burden, while others are anticipated to increase paperwork burden. The overall impact of the revisions, however, will be to reduce the aggregate burden.

The following list itemizes the program changes for the plan year 2007 that affect the paperwork burden, indicating which changes result in an increase and which result in a decrease of paperwork burden:

- Establishment of a simplified reporting option for certain small plans: While a large majority of small plans are estimated to be eligible to use these simplified filing option, it is estimated that approximately half of the eligible plans will take advantage of these simplified filing requirements. For those plans the paperwork burden decreases even when considering a one-time transition burden of 30 minutes per plan.

The following list itemizes the program changes for the plan year 2008 that affect the paperwork burden:

- Establishment of a simplified reporting option for certain small plans: While a large majority of small plans are estimated to be eligible to use these simplified filing option, it is estimated that approximately half of the eligible plans will take advantage of these simplified filing requirements. For those plans, the paperwork burden decreases compared to current filing requirements.<sup>4</sup>
- Establishment of Schedules SB and MB to replace Schedule B. Schedule B will be

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<sup>4</sup> Due to familiarity with the simplified filing requirements of 2007, the burden for plans that take advantage of the simplified filing requirement in 2008 and that already used the simplified filing requirements in 2007 decreases for 2008.

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). Due to a one-time transition burden for Schedule SB and Schedule MB, replacing Schedule B with the new Schedule SB and Schedule MB will increase the annual reporting burden for 30,300 pension plans.

- Additional data elements on Schedule R: The addition of reporting requirements for certain multiemployer plans and questions about asset allocation and duration information for defined benefit pension plans with more than 1,000 participants will result in an increase in burden, including a one-time transition burden.

The following list itemizes the program changes for the plan year 2009 that affect the paperwork burden:

- Removal of the IRS-only schedules (Schedule E and Schedule SSA) from the Form 5500 Annual Return/Report as part of the move to a wholly electronic filing system: On net, this revision would substantially reduce the amount of information collected through the Form 5500 Annual Return/Report.
- Establishment of the new Short Form 5500, which is a simplified report for certain small plans<sup>5</sup>: A large majority of small plans are estimated to be eligible to use the Short Form 5500, which would result in a reduction in the paperwork burden for those plans.
- Continuing use of Schedules SB and MB. Schedule B will be replaced in 2008 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). Although 2,300 Schedule MB filers are estimated to see an increase in their annual reporting cost, the 42,000 filers of Schedule SB are estimated to experience reduced costs (compared to current filing requirements). Overall, replacing Schedule B with the new Schedule SB and Schedule MB will decrease the annual reporting burden.
- Revision of the Schedule C (Service Provider Information) to clarify the reporting requirements and improve the information plan officials receive regarding amounts being received by plan service providers: This is anticipated to increase reporting burden for affected plans.
- Additional data elements on Schedule R: In addition to the requirements added

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<sup>5</sup> The information required on the Short Form 5500 starting for plan year 2009 is similar to the information required under the simplified reporting option for the plan years 2007 and 2008.

for 2008, some additional requirements are introduced in 2009 (Questions for employee stock ownership plans) and one question is removed. Compared to current reporting requirements, the new Schedule R will decrease the burden for some of the affected filers and increase the burden for others (particularly very large multiemployer defined benefit plans).<sup>6</sup>

- Adoption of various technical revisions to the Form 5500 Annual Return/Report to improve and clarify existing reporting requirements (Form 5500, Schedule A, Schedule H, and Schedule I).

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 Form 5500 is not a collection of information for statistical use. Once collected, however, the information is available to the Agencies and the public, and it is used for purposes other than enforcement and disclosure.

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.*

OMB previously granted approval to omit the expiration date from the Form 5500. PBGC requests continued approval to omit the expiration date.

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.

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<sup>6</sup> Mostly due to the one-time transition costs for Schedule R filers in 2008, Schedule R filers will experience a decrease in costs between plan years 2008 and 2009.

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

Not applicable.