

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 103(a) of the Pension Funding Equity Act of 2004, Pub. L. 108-218 (PFEA '04), which was enacted on April 10, 2004, added section 101(f) to the Employee Retirement ERISA. Section 101(f) of ERISA generally requires multiemployer defined benefit plans to furnish a plan funding notice annually to each participant and beneficiary, to each labor organization representing such participants or beneficiaries, to each employer that has an obligation to contribute under the plan, and to the Pension Benefit Guaranty Corporation (PBGC). On January 11, 2006, the Department of Labor (Department) published a final regulation implementing the requirements of section 101(f) of ERISA as amended by PFEA '04. See 29 CFR 2520.101-4.

Subsequently, on August 17, 2006, section 501 of the Pension Protection Act of 2006, Pub. L. 109-280 (PPA), amended section 101(f) of ERISA to provide that the administrator of a defined benefit plan to which title IV of ERISA applies shall for each plan year provide a plan funding notice to the PBGC, to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and, in the case of a multiemployer plan, to each employer that has an obligation to contribute to the plan. Thus, the PPA amendments to section 101(f) extend to single-employer defined benefit plans the current requirement to furnish an annual funding notice. Pursuant to section 501(d) of the PPA, the amendments to section 101(f) apply to plan years beginning after December 31, 2007.

The defined benefit plan funding notice provision were enacted amid concerns about persisting low interest rates and declines in equity values, each of which has an increasing effect on contribution requirements and a decreasing effect on the funding levels of defined benefit plans. More complete and timelier disclosures were considered an important element of measures enacted in PPA and PFEA '04 to strengthen the long-term health of the defined benefit pension system. Increasing the transparency of information about the funding status of defined benefit plans for participants and beneficiaries, the labor organizations representing them, contributing employers, and PBGC will afford all parties interested in the financial viability of these plans greater opportunity to monitor their funding status.

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Recently, concerns have been expressed about the imminent compliance date of the new annual funding notice requirements, the absence of regulatory guidance from the Department, and the cost and burdens attendant to annual funding notice compliance efforts prior to the adoption of annual funding notice regulations and the issuance of model annual funding notices by the Department. In recognition of the foregoing, on February 10, 2009, the Department issued a Field Assistance Bulletin 2009-1 (the FAB) concerning the disclosure requirements mandated by the PPA, which provides model notices. The FAB addresses the need for interim guidance pending the adoption of regulations or other guidance under section 101(f) of ERISA by providing that pending further guidance, the Department will, as a matter of enforcement policy, treat a plan administrator as satisfying the requirements of section 101(f), if the administrator complies with the guidance contained in the FAB (and appropriately uses a completed model notice) and has acted in accordance with a good faith, reasonable interpretation of those requirements with respect to matters not specifically addressed in the FAB.

In 2006, section 501(a) of the Pension Protection Act of 2006, Pub. L. 109-280 (PPA), significantly amended section 101(f) of ERISA. For example, section 101(f) of ERISA now requires administrators of all defined benefit plans that are subject to title IV of ERISA, not only multiemployer plans, to furnish annual funding notices. In addition, the PPA shortened the time frame for providing funding notices and enhanced the notice content requirements. These changes are discussed in detail below. Pursuant to section 501(d) of the PPA, the amendments to section 101(f) apply to plan years beginning after December 31, 2007.

Much of the guidance in FAB 2009-01 has been incorporated into the proposed regulation contained that is the subject of this supporting statement.. That guidance remains in effect until the Department adopts final regulations under section 101(f) of ERISA (or if the Department were to publish any other guidance under section 101(f) other than final regulations). The Department is revising its information collection under OMB Control Number 1210-0126 to reflect the issuance of the FAB at this time.

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 proposed rule provides guidance and answers and model annual funding notices for single and multiemployer defined benefit plans. The guidance provided in the proposed rule (and the included model notices) will be used by the administrators of defined benefit pension plans to

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furnish annually a notice of the plan's funded status to the plan's participants and beneficiaries and other specified interested parties (each labor organization representing such participants or beneficiaries, each employer that has an obligation to contribute under the plan, and the PBGC).

It is assumed that the availability of a model notices in the appendices will lessen the time otherwise required by a plan administrator to draft a required notice.

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). The interim final rule assumes that 38 percent of the notices will be sent electronically.

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 safeguards.

The Government Paperwork Elimination Act (GPEA) requires agencies to allow customers the option to submit information or transact with the government electronically, when practicable. Where feasible, and subject to resource availability and resolution of legal issues, EBSA has implemented the electronic acceptance of information submitted by customers to the federal government.

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.*

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Much of the information required to be furnished in the notice is maintained in the normal business records of pension plans. In addition, much of the information required to be included in the notice is provided on the Form 5500 Annual Return/Report and associated schedules, and the Summary Plan Description.

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 Department does not expect that the plans potentially impacted by this proposal will be 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*

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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.

The Department has published a notice in accordance with 5 CFR 1320.8(d) soliciting comments on the collection and burden estimates as part of the attached Proposed Regulation: Annual Funding Notice for Multiemployer Defined Benefit Pension Plans.

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

Not applicable.

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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, 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.*

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In order to estimate the potential costs of the notice provisions of section 101(f) of ERISA and the proposed rule, the Department estimated the number of single-employer and multiemployer defined benefit plans, and the numbers of participants, beneficiaries receiving benefits, labor organizations representing participants, and employers with an obligation to contribute to these plans.

The PBGC Pension Insurance Data Book 2008 indicates that there are about 1,500 multiemployer defined benefit plans with approximately 10.1 million participants and beneficiaries receiving benefits. These estimates are based on premium filings with PBGC for 2007, projected by PBGC to 2008, generally the most recent information currently available. This total has been adjusted slightly to reflect the exception from the requirement to furnish annual funding notices to plans that are receiving financial assistance from PBGC.¹ The PBGC Pension Insurance Data Book 2008 also indicates that there are approximately 28,000 single-employer defined benefit plans with approximately 33.8 million participants.

The Department is not aware of a direct source of information as to the number of labor organizations that represent participants of multiemployer defined benefit plans and that would be entitled to receive notice under section 101(f). As a proxy for this number, the Department has relied on information supplied by the Department's Employment Standards Administration, Office of Labor Management Standards, as to the number of labor organizations that filed required annual reports for their most recent fiscal year, generally 2008, at this time. The Department adjusted the number provided by excluding labor organizations that appeared to represent only state, local, and Federal governmental employees to account for the fact that such employees are generally unlikely to be participants in plans covered under title I of ERISA. The resulting estimate of labor organizations that could be entitled to receive notice is almost 18,500.

The Department also is unaware of a source of information for the current number of employers obligated to contribute to multiemployer defined benefit plans. PBGC assisted with development of an estimate of this number by providing the Department with a tabulation on their 1987 premium filings of the number of employers contributing to multiemployer defined benefit plans at that time. This was the last year this data element was required to be reported on the Form 5500. The Department has attempted to validate that 1987 figure by dividing the number of participants in multiemployer defined benefit plans in the industries in which these plans are most concentrated, such as construction, trucking, and retail food sales,² by the average

¹ According to the PBGC Pension Insurance Data Book 2008, there were 1,513 multiemployer defined benefit plans in 2006. This number was reduced by 42 in order to account for the 42 plans that received financial assistance.

² See GAO-04-423 Private Pensions: Multiemployer Plans Face Short - and Long -Term Challenges. U.S. General Accounting Office, March 2004. The General Accounting Office's name changed to the Government Accountability Office effective July 7, 2004.

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number of employees per firm in those industries based on data published by the Office of Advocacy, U.S. Small Business Administration for 2001. This computation resulted in a figure that was similar in magnitude, but somewhat higher than the 277,600 employers reported in the 1987 PBGC premium filing data. As a result, the Department has used 300,000 for its conservative estimate of the number of contributing employers to whom the required notice will be sent.

For purposes of its estimates of regulatory impact, the Department has assumed that each plan will develop a notice, and that each year approximately 44.3 million notices will be prepared and sent. The 44.3 million estimate breaks down as follows: 10.1 million notices to participants and beneficiaries of close to 1,500 multiemployer defined benefit plans; 33.8 million notices to participants and beneficiaries of close to 28,000 single employer plans; 39,000 notices to labor organizations; 300,000 notices to contributing employers of multiemployer plans; and 30,000 notices to the PBGC.

Estimates of notice preparations are based on the assumption that plan service providers, actuaries, lawyers, and financial professionals will produce the notices. It is assumed that the availability of a model notice will lessen the time otherwise required by a plan administrator to draft a required notice. The Department has made the following estimate regarding preparation of the notice: actuaries will spend three hours in the first year and two hours in each succeeding year for single-employer plans and two hours in the first year and one hour in each succeeding year for multiemployer plans making specific calculations for information that must be provided in the notice; legal professionals will spend one hour in the first year and 0.5 hours in each succeeding year reviewing the notice; and financial professionals will spend one hour in the first year and thereafter drafting the notice for single-employer plans and two hours per year for multiemployer plans. The final preparation and distribution of the notice will be done by a clerical professional using an estimated two minutes per notice mailed. The Department welcomes comments regarding these estimates.

Assuming 44.3 million notices are distributed,³ the burden hours for that initial year of implementation are 87,000 actuarial hours, 31,000 financial professional hours, and 29,000 legal professional hours. Total clerical professional hours are calculated based on the total number of notices mailed and the preparation time of 2 minutes per notice resulting in 915,000 hours. The total hour burden for the year of implementation is 1,061,000 hours. Each subsequent year requires 57,000 actuarial hours, 915,000 clerical hours, 31,000 financial professional hours, and 15,000 legal professional hours for a total of 1,018,000 hours.⁴

Hourly labor rates were calculated using the rates based on the Bureau of Labor Statistics,

³ The Department assumes that 38 percent of notices are sent electronically and result in only a de minimis cost.

⁴ The average Total Annual Burden Hours over the first three years is 1,032,000.

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National Occupational Employment Survey (May 2008) and the Bureau of Labor Statistics, Employment Cost Index (June 2009).⁵ Calculations of the 2010 hourly labor costs were \$26.14 for a clerical professional, \$62.81 for a financial professional, \$91.56 for an actuary, and \$119.03 for plan legal counsel.

Based on the foregoing, the total equivalent cost for the initial year is estimated at approximately \$7,937,000 for actuarial services, \$23,915,000 for clerical services, \$1,942,000 for financial professional services, and \$3,409,000 for legal professional services. The total equivalent cost is approximately \$37,203,000 in the initial year.

The total equivalent cost in each subsequent year is estimated at approximately \$5,245,000 for actuarial services, \$23,915,000 for clerical services, \$1,942,000 for financial professional services, and \$1,750,000 for legal professional services. The total equivalent cost is estimated at approximately \$32,852,000 in each subsequent year.

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 cost of mailing the notices was based on the assumption that each notice would be six pages for single-employer plans and five pages for multiemployer plans, with printing costs of 5 cents per page and postage of 44 cents resulting in an estimated 74 cent cost per paper notice for single-employer plans and a 69 cent cost per paper notice for multiemployer plans. It was further assumed that 38 percent of notices would be sent electronically. The Department has not estimated any additional burden for preparation or distribution of notices via electronic means because the Department assumes that plans will utilize pre-existing electronic communications systems and e-mail lists for these purposes and the process of preparation and distribution involves only a de minimis additional effort, e.g., a few computer key strokes or the equivalent. This assumption will result in a total of approximately 16.8 million notices being sent electronically by multiemployer and single-employer plans. Single-employer plans will mail out approximately 21.0 million paper notices and multiemployer plans will mail out approximately 6.5 million paper notices. Total annual paper mailing costs are estimated to be approximately \$20.0 million.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a*

⁵ EBSA estimates of labor rates include wages, other benefits, and overhead.

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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.

None

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

The Department's estimate of the hour and cost burden associated with this information collection has decreased since the last submission. The overall burden of the rule also has been reduced, because the number of defined benefit pension plans that are subject to the information collection has decreased. While the Department increased the time required to complete some tasks (actuarial) and updated wage rates, the number of participants and beneficiaries in defined benefit pension requiring a notice, as reported by the PBGC, has fallen by about five million individuals since the previous estimate was completed.

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.*

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.