

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 203(a)(3)(B) of the Employee Retirement Income Security Act of 1974 (ERISA) governs the circumstances under which pension plans may suspend pension benefit payments to retirees who return to work or to participants who continue to work beyond normal retirement age. This section sets forth the circumstances and conditions under which such benefit payments may be suspended. Furthermore, section 203(a)(3)(B) of ERISA authorizes the Secretary to prescribe regulations to carry out the provisions of this section.

This regulation, which was issued on January 27, 1981, amended on December 4, 1981, and corrected on December 11, 1981, generally describes the manner and circumstances under which retirement benefits may be suspended during periods of employment subsequent to retirement. The rule also clarifies that the normal retirement benefit of a participant who continues working beyond the plan's normal retirement age may also be considered to be suspended even though no act of retirement has occurred.

In order for a plan to suspend benefits pursuant to the regulation, it must notify the affected retiree or participant during the first calendar month or payroll period in which the plan withholds payment that benefits are suspended. Requests for such reviews may be considered in accordance with the claims procedure adopted by the plan pursuant to Section 503 of the Act and applicable regulations. The notice must include the specific reasons for such suspension, a general description of the plan provisions authorizing the suspension, a copy of the relevant plan provisions, and a statement indicating where the applicable regulations may be found, i.e., 29 CFR § 2530.203-3. In addition, the suspension notification must inform the retiree or participant of the plan's procedure for affording a review of the suspension of benefits.

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 requirement that retirees or participants be notified in the event of a suspension of benefits is intended to protect their nonforfeitable right to their normal retirement benefits. By informing retirees or participants of the reasons for the suspension, the authority for the suspension, and the plan's procedure for review of a suspension of benefits, participants are made aware of the status of their pension benefits and are able to raise with the plan facts or issues that may be relevant to determining whether a suspension of benefits is proper under the circumstances.

3. *Describe whether, and to what extent, the collection of information involves the use of automated,*

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*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.*

Notification is mandatory only if a plan provides for suspension of benefits. Suspension is not required by the statute. Under 29 C.F.R. § 2520.104b-1(b) of ERISA, “where certain material, including reports, statements, and documents, is required under Part I of the Act and this part to be furnished either by direct operation of law or an individual request, the plan administrator shall use measures reasonably calculated to ensure actual receipt of the material by plan participants and beneficiaries.” Section 2520.104b-1(c) establishes the manner in which disclosures under Title I of ERISA made through electronic media will be deemed to satisfy the requirement of § 2520.104b-1(b). Section 2520-107-1 establishes standards concerning the use of electronic media for maintenance and retention of records. Under these rules, all pension and welfare plans covered under Title I of ERISA may use electronic media to satisfy disclosure and recordkeeping obligations, subject to specific safeguards.

4. *Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.*

The notification requirement relates to individual circumstances, i.e., the notice of the withholding of a benefit due to re-employment subsequent to retirement or employment beyond normal retirement age. The regulation also allows the notice to refer to existing information published in the summary plan description (SPD) for the rules and procedures governing suspension of benefits if that information meets the requirements of this regulation for the purpose of avoiding duplication in providing information about the plan’s rules regarding suspension of benefits.

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 paperwork requirements of the regulation affect small businesses and small pension plans in much the same manner as large businesses and pension plans. However, notification for small plans may be somewhat easier than for large plans. Small employers with plans tend to operate in fewer locations and as a result, can more easily identify affected individuals and deliver notices without additional distribution costs. Small employers are also less likely to sponsor defined benefit plans, the type of plan most affected by this regulation.

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.*

In the Department’s view, it is important that the retiree or participant be informed at the initiation of every withholding or suspension of benefits.

7. *Explain any special circumstances that would cause an information collection to be conducted in a*

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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.*

The Department's Federal Register notice, as required by 5 CFR 1320.8(d), soliciting comments on the information collection was published in the Federal Register on November 10, 2010, 2010 (75 FR 69130), providing the public 60 days to comment on the submission. No comments were received.

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

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No payments or gifts are provided to respondents.

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

Not applicable.

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.*

The Department's *Private Pension Plan Bulletin Abstract of 2005 Form 5500 Annual Reports* (February 2008), indicates that there are 47,614 defined benefit plans. The Department estimates that there are 233,000 individuals each year who may need to receive notification of suspension of benefits from these plans. This number was derived from estimating two subgroups of the population requiring notification:

- (1) participants attaining normal retirement age (NRA), and
- (2) retirees from single employer and multiemployer plans who return to suspensible work.

The number of participants in group (1) was estimated at the request of EBSA by the Policy Simulation Group using a microsimulation model called Pensim (See documentation at <http://www.polsim.com/PENSIM.html>). This model simulates the labor force experience of

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individuals throughout their lifetimes and estimates the annual number of workers that continue to work past the age at which each worker first qualifies for normal retirement based in part on information from the BLS National Compensation Survey. The model recognizes that many plans specify multiple age /service combinations that qualify participants for normal retirement and determines for each simulated work history the earliest age at which that individual would qualify for normal retirement. The model estimates that about 200,000 workers each year would reach the normal retirement age that applies to them and continue to work beyond it.<sup>1</sup> At that juncture, employers would be required to provide those individuals with the required notice. The Department estimates that of those 200,000 workers, approximately 149,000 participate in a single-employer plan, while 51,000 participate in a multiemployer plan. This breakdown was estimated using Form 5500 data on the proportion of retired participants from Defined Benefit plans in single-employer or multiemployer plans.

Estimating the number of retirees in group (2) (those who return to work that would result in a suspension of benefits) begins with an estimate of the total number defined benefit plan participants receiving benefits based on the 2007 Private Pension Bulletin published by EBSA. There are approximately 44,222 plans (42,744 single employer plans and 1,478 multiemployer plans) in the data that are subject to the suspension of benefits requirement. From these eligible plans, there are 7.95 million retirees receiving benefits from single employer defined benefit plans and 2.72 million receiving benefits from multiemployer defined benefit plans. Based on a study of structural retirement conducted by Alan Gustman of Dartmouth for the Department of Labor, EBSA assumed for the 2005 renewal of this regulation that single employer plan participants would not return to the same employer after normal retirement age.

Although EBSA is still aware of no data with which to estimate the frequency of such events, zero no longer appears to be a reasonable estimate. EBSA does assume, however that the percentage of retirees who return to employment with the sponsor of his / her single employer plan would be quite small because suspension of benefits is a significant disincentive and most retirees from single employer plans could seek employment from employers with whom employment would not result in suspension of benefits. Based on the foregoing, EBSA has assumed that 0.2% of retirees from single employer defined benefit plans would return to employment with their plan sponsor each year. In multiemployer plans, the range of employers with whom reemployment could result in a suspension of benefits is much broader, often consisting of the entire industry in which the retiree has experience. EBSA has therefore assumed a higher annual rate, 0.5%, at which retirees from multiemployer plans return to work in suspendible service. Thus, the annual number of defined benefit plan retirees estimated to be reemployed either with the sponsor of their defined benefit plan or within the industry or geographical area covered by their multiemployer plan is therefore about 16,000 (7.95 million x 0.2%) in single employer plans and 14,000 (2.72 million x 0.5%) in multiemployer plans.

The total number of participants each year who experience events that could trigger a suspension of benefits is the sum of the group (1) counts and the group (2) counts, which is

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<sup>1</sup> This estimate is based on a one percent sample of the population cohorts born in 1935 and subsequent years.

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165,000 (149,000 + 16,000) in single employer plans and 65,000 (51,000+14,000) in multiemployer plans. Estimates must also account for the fact that some plans do condition benefit commencement upon termination of employment. To the extent that these workers receive pension benefits while working, a suspension of benefits notice is not required. Of all defined benefit plan participants who continue working past their NRA, EBSA assumes that the percentage whose benefits would be suspended is 70% for single employer plans, and 90% for multiemployer plans. Thus, the number of annual notices required to be sent is the product of the number of participants experiencing a triggering event and the percentage whose plans suspend benefits. This approach results in estimates of 115,000 (165,000 x 70%) annual notices from single employer plans and 58,000 (65,000 x 90%) notices from multiemployer plans. The Department estimates, in total, that 173,560 notices will be distributed to participants.<sup>2</sup>

If a plan chooses to suspend benefits, it must actuarially recalculate the benefits for individuals continuing to work past normal retirement age or provide notification of the suspension. The Department assumes that plans will choose the notification rather than incur the costs of actuarial recalculations. Therefore, the cost estimates are based on sending notifications each year.

The notification to individuals affected by the regulation may consist of a standardized letter referencing relevant pages in the summary plan description (SPD) and a copy of plan provisions relating to the suspension of benefits. While the standardized letter must be drafted the first time it is used, it can be reused for all affected individuals with certain minor changes for individual situations. Since the notice requirement has been in effect for many years and very few sponsors are establishing new defined benefit plans, the Department assumes that most, if not all, plans have drafted the notice, and therefore, no preparation time has been included in our estimates. The Department estimates that copying and distribution of the notice will require 5 minutes per notice or 14,463 hours (173,560 notices x 1/12 hour). Since the plan provisions are readily available to the plan, no significant time is required to obtain copies for mailing. We assume most plans will bear a minimal burden in sending the notification, because they normally maintain mailing addresses for other business reasons.

Certain multiemployer plans have indicated that they will have substantial difficulties in identifying participants who need to receive notice of suspension, because the participants are still working past normal retirement age. Some of these multiemployer plans depend on the worker to inform them when he or she is eligible for benefits. However, many multiemployer plans are large plans with computerized age and service data on participants that may facilitate the identification of affected individuals. The Department estimates that it will take 15 minutes per plan per month by a compensation benefits manager<sup>3</sup>, on average, or 132,666 hours (44,222 total plans x .25 hours per plan per month x 12 months per year) to identify those participants who require notification.

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<sup>2</sup>Mathematical discrepancies are a byproduct of rounding

<sup>3</sup>This works out to be 3 hours per plan per year

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Thus, the total hour burden is estimated to be 147,129 hours (14,463 clerical hours+ 132,666 benefit manager hours). The equivalent cost hour burden to prepare the required notices is estimated at \$91.21 per hour for each plan for benefits manager time (\$91.21 x 132,666 = \$12,100,466), and \$27.21 per hour for clerical time (\$27.21 x 14,463 = \$393,547), for a total of \$12,494,013.<sup>4</sup>

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 total cost to plans per notice is estimated at 10¢ for materials and supplies, plus 44¢ for postage, or 54¢ per notice. There are an estimated 173,560 notices to be distributed. Of these, 38 percent are expected to be distributed by electronic means at no cost. The remaining 107,607 notices ( $107,607 = 173,560 * .62$ ) will be distributed by first class mail for an expected cost of approximately \$58,000. No outside costs other than the mailing costs shown above will be incurred by the plans in complying with this requirement.

14. *Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.*

There are no costs to the government associated with this information collection..

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

Adjustments to the hour and cost burdens in the ICR result from updating (1) the number of defined benefit plans, (2) the estimated number of participants who work past normal retirement age or return to work after retirement, and (3) materials and postal rates.

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.*

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<sup>4</sup> EBSA estimates of labor rates include wages, other benefits, and overhead based on the National Occupational Employment Survey (May 2009, Bureau of Labor Statistics) and the Employment Cost Index (October 2010, Bureau of Labor Statistics).

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Not applicable. After OMB clears the renewal, EBSA will publish a Federal Register notice that notifies the public of the expiration date for OMB approval of the information collection.

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.

**SUPPORTING STATEMENT B—STATISTICAL METHODS**

This information collection does not employ statistical methods.