

**SUPPORTING STATEMENT**  
**REGULATIONS, 29 C.F.R. PART 547, REQUIREMENTS OF A “BONA FIDE THRIFT**  
**OR SAVINGS PLAN” and**  
**REGULATIONS, 29 C.F.R. PART 549, REQUIREMENTS OF A “BONA FIDE PROFIT-**  
**SHARING PLAN OR TRUST”**  
**OMB CONTROL NUMBER: 1235-0013**

**Part A: Justification**

1. Bona Fide Thrift or Savings Plan: Regulations 29 C.F.R. Part 547 contains the requirements for a “bona fide thrift or savings plan” under section 7(e)(3)(b) of the Fair Labor Standards Act (FLSA). *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. §§ 547.0-.2. To compute the amount of overtime due to an individual, it is necessary to first compute the “regular rate” that the individual earned. *See* 29 U.S.C. § 207 (a); 29 C.F.R. §§ 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide thrift or savings plan, as defined in these regulations. *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. § 547.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide thrift or savings plan. 29 C.F.R. § 547.1(b).

Bona Fide Profit-Sharing Plan or Trust: Regulations 29 C.F.R. Part 549 contains the requirements for a “bona fide profit-sharing plan or trust” under section 7(e)(3)(b) of the FLSA. *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. §§ 549.0-.3. To compute the amount of overtime due to an individual, it is necessary to first compute the “regular rate” that the individual earned. *See* 29 U.S.C. § 207 (a); 29 C.F.R. §§ 778.107-.109. When computing the regular rate, it is not necessary to include any sums paid to or on behalf of an employee pursuant to a bona fide profit-sharing plan or trust as defined in these regulations. *See* 29 U.S.C. § 207(e)(3)(b); 29 C.F.R. § 549.0. Employers are required to communicate, or make available to the employees, the terms of the bona fide profit-sharing plan or trust. 29 C.F.R. § 549.1(b).

FLSA section 11(c) requires all employers covered by the FLSA to make, keep, and preserve records of employees and of wages, hours, and other conditions and practices of employment. *See* 29 U.S.C. § 211(c). An FLSA-covered employer must maintain such records for a specified period of time and make such reports as prescribed by regulations issued by the Secretary of Labor. *Id.*

2. The third-party disclosure requirements covered by this information collection provide transparency to employees about their remuneration. 29 C.F.R. §§ 547.1(b), 549.1(b). Records detailing the specifics of a thrift or savings plan, as well as a profit-sharing plan or trust, provide evidence of an employer’s compliance or non-compliance with the FLSA. Employer maintenance of those records enables Department of Labor (DOL) investigators to determine, upon inspection, whether such employers are in compliance with section 7(e)(3)(b) of the FLSA. Without these records, no determination could be made.

3. The Department accepts third-party disclosures in electronic format as complying with the requirements of this information collection. The only information employers are required by these regulations to maintain is that information necessary to support the plan's qualifications as a bona fide thrift or savings plan, profit-sharing plan or trust. Use of improved information technology is at the discretion of the record keeper.
4. The DOL accepts information disclosed and records maintained pursuant to the Employee Retirement Income Security Act, 29 U.S.C. § 2021 *et seq.*, (or any other statutory or regulatory requirement) as satisfying the requirements of this information collection, where there is an overlap in the requirements. *See e.g.*, OMB Control Number 1210-0110. The DOL must maintain the separately stated requirements of this information collection in order to meet the FLSA expectation that the agency clarify what constitutes a "bona-fide" plan or trust under either Part 547 or 549.
5. Small businesses choosing to establish a thrift or savings plan, profit-sharing plan or trust are impacted by this information collection. The DOL estimates that 86 percent of employers subject to this information collection are small businesses. (*See Census, Statistics about Business Size-including Small Business*, Table-2a, U.S. Department of Commerce, Bureau of the Census, <http://www.census.gov/econ/smallbus.html>). In order to fulfill contractual obligations under a chosen plan or trust, prudent management practice dictates that the disclosures and records maintained by a business pursuant to the regulations be kept even if the requirement to do so did not exist; thus, no alternative means exist to reduce this burden, but for the acceptance of information collected pursuant to identical requirements. Moreover, no particular order or form of record is required by the regulations.
6. There is no regular collection of the information required by the regulations. The regulations require only that the terms of the plan be "in writing" and "communicated or made available" to the employees. *See* 29 C.F.R. §§ 547.1(b); 549.1(b). No further information collection is required. If the information were collected less frequently or not at all, a determination regarding FLSA compliance could not be made.
7. There are no special circumstances required in the conduct of these information collections.
8. The DOL published a Notice in the *Federal Register* inviting public comments about these information collections on May 16, 2011. 76 FR 28242. The agency received no comments in response to the Notice.
9. The DOL offers no payments or gifts to respondents in connection with these information collections.
10. The DOL makes no assurances of confidentiality to respondents. As a practical matter, the DOL would only disclose information collected under these requests in accordance

with the provisions of the Freedom of Information Act, 5 U.S.C § 552; the Privacy Act, 5 U.S.C. § 552a; and their respective regulations, 29 C.F.R. Parts 70, 71.

11. These information collections ask no sensitive questions.
12. The potential respondent universe includes all employers covered by the FLSA (*i.e.*, employers with workers engaged in interstate commerce, producing goods for interstate commerce, or handling, selling, or otherwise working on goods or materials that have been moved in or produced for such commerce by any person), which affects approximately 2.350 million employers. (See *Census, Statistics about Business Size-including Small Business*, Table-3, U.S. Department of Commerce, Bureau of the Census, <http://www.census.gov/econ/smallbus.html>). Some 44 percent of establishments offer a defined contribution plan.<sup>1</sup> (See *National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2007*, DOL, Bureau of Labor Statistics (BLS), [www.bls.gov/ncs/ebs/sp/ebsm0006.pdf](http://www.bls.gov/ncs/ebs/sp/ebsm0006.pdf) ). Of the estimated 2.350 million employers, 44 percent results in a potential universe of 1,034,112 employers with defined contribution plans, which includes both thrift savings plans and deferred profit-sharing plans.

The DOL estimates average establishment size to be 5 employees, and the typical worker remains employed for the same employer for seven years (based on an average turnover rate of 15 percent); thus, the average employer makes 0.75 disclosures per year were all employees to participate.

Where retirement plans are available, 76 percent of the eligible employees participate. (See DOL, BLS, *National Compensation Survey: Employee Benefits in Private Industry in the United States, 2010*, Table 1 <http://www.bls.gov/news.release/pdf/ebs2.pdf>).

Based on the relevant information the DOL estimates 589,444 annual responses. 1,034,112 respondents x 0.75 responses based on full participation x 0.76 (the combined number of thrift and deferred profit participants) actual participation rate = 589,444 Annual Responses. See also, *Census, Statistics about Business Size-including Small Business*, Table-3, U.S. Department of Commerce, Bureau of the Census, [www.census.gov/econ/smallbus.html](http://www.census.gov/econ/smallbus.html).

These regulations would typically not impose any third-party disclosure or recordkeeping burdens on employers beyond what would be common under prudent business practices or required under information collections administered by other agencies. A prudent employer establishing a thrift or savings plan, profit-sharing plan or trust would set forth the plan in writing, describe eligibility requirements, a definite formula for saving, and the amount of the employer's contributions, even if not required to do so by these regulations. The annual burden is estimated to equal two seconds (one second for disclosure and another second for recordkeeping) per new employee, in order to

---

<sup>1</sup> The most recent data available are from 2007; as employers have been increasingly moving away from defined benefit plans and towards defined contribution plans, this estimate is likely low.

account for situations where the employer would not disclose information subject to this collection as either a routine business practice or in response to an information collection covered under another OMB Control Number.  $589,444/60 \text{ seconds}/60 \text{ minutes} \times 2 = 327 \text{ hours}$  Total Annual Recordkeeping and Disclosure Burden Hours.

In the extremely rare situation (*i.e.*, three occurrences since 1970) where an employer must post a notice as required by 29 C.F.R. § 549.1(d)(2), there would be some burden on the employer to meet this requirement (approximately one hour); however, because this occurs so infrequently, this burden figure has not been calculated.

Employers from a wide variety of businesses, from small firms or retail stores to large manufacturing plants have employee profit-sharing plans or trusts. Absent specific wage data regarding such employers, respondent costs are estimated utilizing \$22.86 per hour, which is the seasonally adjusted average hourly rate of production for non-supervisory workers for January 2011. (See *Employment Situation, March 2011*, Table B-3, p. 32. DOL, BLS, [http://www.bls.gov/news.release/archives/empsit\\_04012011.pdf](http://www.bls.gov/news.release/archives/empsit_04012011.pdf)).  $\$22.86 \times 327 \text{ hours} = \$7475$ .

13. The requirements merely direct employers to maintain in their files a copy of the plan, describing its provisions; therefore, there are no annual cost burdens to record keepers.
14. There are no costs for the Federal government for this third-party disclosure.
15. The DOL has decreased the number of annual responses from 633,000 to 589,444 due to updated census data that showed an increase in affected businesses and updated National Compensation Survey data that showed a lower level of retirement plan participation than previously assumed. Taking these adjustments into account the Department has decreased the estimated burden hours by 24 hours.
16. The DOL does not publish the results of this information collection.
17. The DOL does not seek an exception to the requirement to display the expiration date on these information collections.
18. The DOL is not requesting an exception to the certification requirements for this information collection.

## **Part B: Statistical Methods**

This information collection does not employ statistical methods.